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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

-----  
JOSE ACEVEDO, individually,  
and as a Special Administrator  
of the ESTATE OF JOEL ACEVEDO,

Plaintiff,

-vs-

Case No. 23-cv-00489

MICHAEL MATTIOLI, et al.,

Defendants.  
-----

Examination of MICHAEL MATTIOLI,  
taken at the instance of the Plaintiff, under and  
pursuant to the Federal Rules of Civil Procedure,  
before ALICIA PABICH, a Certified Shorthand Reporter  
and Notary Public in and for the State of Wisconsin,  
at Wirth + Baynard, 9898 W. Bluemound Road, Suite 2,  
Wauwatosa, Wisconsin, on April 25, 2025, commencing  
at 9:36 a.m. and concluding at 1:33 p.m.

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2

1 A P P E A R A N C E S  
2 JACOB LITIGATION, INC., by  
3 MR. DEVON M. JACOB,  
4 P.O. Box 837,  
5 Mechanicsburg, Pennsylvania 17055-0837,  
6 appeared on behalf of the Plaintiff.  
7 THE LAMARR FIRM, by  
8 MR. B'IVORY LAMARR,  
9 5718 Westheimer Road, Suite 1000,  
10 Houston, Texas 77057,  
11 appeared on behalf of the Plaintiff.  
12 WIRTH + BAYNARD, by  
13 MS. JASMYNE M. BAYNARD,  
14 9898 West Bluemound Road, Suite 2,  
15 Wauwatosa, Wisconsin 53226,  
16 appeared on behalf of the Defendant, Michael  
17 Mattioli.  
18 CITY OF MILWAUKEE,  
19 OFFICE OF THE CITY ATTORNEY, by  
20 MR. CLINT B. MUCHE,  
21 841 North Broadway, Room 716,  
22 Milwaukee, Wisconsin 53202,  
23 appeared on behalf of the Defendants, Robert Roach,  
24 Alfonso Morales, and City of Milwaukee.  
25

\* \* \* \* \*

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TRANSCRIPT OF PROCEEDINGS

MICHAEL MATTIOLI, called as a witness  
herein, having been first duly sworn on oath,  
was examined and testified as follows:

EXAMINATION

BY MR. JACOB:

**Q. It's Michael Mattioli; correct?**

A. Correct.

**Q. Do you have a middle name?**

A. Anthony.

**Q. And are you a junior, a senior, the third?**

A. No.

**Q. Just one of you?**

A. Just me.

**Q. Got it. Have you ever given a deposition  
before?**

A. No.

**Q. I mean, I know you went to a trial so you are  
familiar with testifying in questions and  
answers, but just to make sure we are on the  
same page, I'm just going to go through a few  
things. First of all, the court reporter has  
two hands, but it's not one for you, one for  
me. So to the extent that you can let me  
finish my questions, even if you can tell where**

5

1 I'm going, please let me do so so that way we  
 2 can get it down on the record. Of course I  
 3 will do the same for you, I will wait to start  
 4 a question until you're finished with your  
 5 answer. Okay?  
 6 A. Okay.  
 7 **Q. You are also -- you know, you are verbalizing.**  
 8 You know how to do that. And so I just ask you  
 9 to continue to do that because shakes of the  
 10 head, nods, gestures, it's impossible later to  
 11 figure out what anyone was trying to say on a  
 12 written record. Okay?  
 13 A. Right.  
 14 **Q. If at any point in time you need a break, just**  
 15 **let me know. I don't need to know why, just if**  
 16 **you need a break, we will take one. I just ask**  
 17 **if there's a question pending that you answer**  
 18 **that question before we take the break. Okay?**  
 19 A. Okay.  
 20 **Q. If at any point in time you don't understand a**  
 21 **question that I ask, I'm sure it's my fault,**  
 22 **not yours, so just let me know. I will be**  
 23 **happy to rephrase, restate, whatever you need**  
 24 **to understand what I'm trying to say because I**  
 25 **only want you to answer a question if you**

6

1 understand it. Okay?  
 2 A. Okay.  
 3 **Q. I'm not here to play games. I'm pretty**  
 4 **straightforward. Counsel, you know, has pretty**  
 5 **much figured that out by now, too. So, again,**  
 6 **I'm not here to trick you or to force you to**  
 7 **guess on anything. In fact, I don't want that.**  
 8 **I am just here to get factual information from**  
 9 **you because you were involved in an incident**  
 10 **that I wasn't, and so you're one of the best**  
 11 **sources for that information. Okay?**  
 12 A. Okay.  
 13 **Q. There's been a significant passage of time, so**  
 14 **if you don't remember something or don't**  
 15 **recall, that's fine, that's your answer, I**  
 16 **don't remember, I don't recall. I just ask**  
 17 **that if later in the deposition if something**  
 18 **has refreshed your memory or something has come**  
 19 **back to you, just let me know, we can amend the**  
 20 **answer. I won't think that you are playing**  
 21 **games with me either. I just realize there's,**  
 22 **you know, a passage of time and this is not**  
 23 **your focus every single day. Okay?**  
 24 A. Okay.  
 25 **Q. Is there any reason you wouldn't be able to**

7

1 answer truthfully questions here today?  
 2 A. No.  
 3 **Q. Meaning, there's no medication or medical**  
 4 **condition that would prevent you from doing so?**  
 5 A. No.  
 6 **Q. I'm assuming you are prepared to proceed then?**  
 7 A. Yes.  
 8 **Q. All right. I just want to do a little bit of**  
 9 **background just because I don't know you,**  
 10 **obviously. You graduated high school; correct?**  
 11 A. I did.  
 12 **Q. And then went on -- did you go to college?**  
 13 A. I got an associate's degree in -- from a  
 14 technical college for police science.  
 15 **Q. Okay. And then naturally went into policing?**  
 16 A. Correct.  
 17 **Q. I know some departments -- and I don't think**  
 18 **that is the case for the city, but I know some**  
 19 **places you can put yourself through the**  
 20 **academy, other ones the department you are**  
 21 **going to work for puts you through?**  
 22 A. That's right.  
 23 **Q. So in this situation, the department that you**  
 24 **went to work for put you through the academy?**  
 25 A. Correct.

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1 **Q. And that department was?**  
 2 A. Milwaukee.  
 3 **Q. And was that the only police department that**  
 4 **you worked for?**  
 5 A. Yes, the only one.  
 6 **Q. And other than policing, have you had any**  
 7 **similar-type experience, meaning like private**  
 8 **security?**  
 9 A. No.  
 10 **Q. Were you in the military?**  
 11 A. I was.  
 12 **Q. And what -- what was generally your job in the**  
 13 **military?**  
 14 A. I was military and police in the Army National  
 15 Guard.  
 16 **Q. And was that -- that was all before policing or**  
 17 **did it continue into policing?**  
 18 A. It was -- well, right after I went into the  
 19 police academy first. And I think it was  
 20 within a month of graduating the police academy  
 21 I went to basic training. Excuse me.  
 22 **Q. Are you okay?**  
 23 A. So it was during --  
 24 MS. BAYNARD: Do you need a drink of  
 25 water?

9

1 THE WITNESS: Yeah. I don't know if  
 2 my throat is all --  
 3 BY MR. JACOB:  
 4 **Q. Go ahead. A lot of people are allergic to me.**  
 5 A. I don't know why --  
 6 **Q. Could be the extreme heat in here. No, I'm**  
 7 **just kidding. Sorry.**  
 8 Military policing, excuse me, was  
 9 there a separate police training for that job?  
 10 A. There was, yes.  
 11 **Q. And that wasn't very clear to me. But, I mean,**  
 12 **you went to basic training. And then is there**  
 13 **a specialized training for military police?**  
 14 A. There is.  
 15 **Q. And how long is the military policing part?**  
 16 A. I don't remember exactly. Maybe about two  
 17 months possibly.  
 18 **Q. Okay.**  
 19 A. Two or three months. Not sure.  
 20 **Q. And -- I'm sorry, I cut you off.**  
 21 A. I don't know the exact. Maybe two to  
 22 three months. Something like that.  
 23 **Q. And what types of things do they teach you with**  
 24 **respect to military police training?**  
 25 A. Oh, jeez. This was back in 2009, I think it

10

1 was. I don't remember a lot and it was very  
 2 minimal. It was very -- in basic training and  
 3 the military police, it's very much hurry up,  
 4 let's go, hurry up. That's how military is.  
 5 So it wasn't -- like we would do some training  
 6 very quickly and then never again. So I -- you  
 7 lose all of that. And I never got a chance to  
 8 practice any of that training that I got in the  
 9 military, so it kind of just is gone.  
 10 **Q. So you got trained for the job that you were**  
 11 **assigned, military policing, and you continued**  
 12 **to train on your required duty weekends for the**  
 13 **National Guard; is that correct?**  
 14 A. Correct.  
 15 **Q. Were you ever activated?**  
 16 A. I was not, no.  
 17 **Q. Okay. And, also, then all your time was here**  
 18 **stateside?**  
 19 A. Correct.  
 20 **Q. With respect to the military policing, I think**  
 21 **you said that you didn't get to use it, but did**  
 22 **you ever get to arrest somebody as a military**  
 23 **police officer?**  
 24 A. No. I never actually worked in that capacity  
 25 as -- when I was in the Army. We just would do

11

1 training. I was never actually activated in  
 2 any capacity.  
 3 **Q. So they had you fully trained, ready to go if**  
 4 **they needed, but they never called you up to**  
 5 **actually do the job?**  
 6 A. Right.  
 7 **Q. Fair enough. Are you still in the National**  
 8 **Guard?**  
 9 A. No.  
 10 **Q. And how often did you have to retrain with the**  
 11 **National Guard? Is it a yearly thing, a**  
 12 **monthly thing?**  
 13 A. We would do about once a month and on a weekend  
 14 for drill they call it, and then about two  
 15 weeks in the summertime we would do some sort  
 16 of training.  
 17 **Q. Okay. So you went through a police academy for**  
 18 **civilian policing and you went through a**  
 19 **military police academy. Would you agree with**  
 20 **me that there are different rules of engagement**  
 21 **that would apply in each context?**  
 22 A. Yes.  
 23 **Q. And can you -- I will leave it at that then.**  
 24 **With respect to that, though, were you trained**  
 25 **regarding the various laws that would apply in**

12

1 each venue?  
 2 A. Not in military, no.  
 3 **Q. So in the military -- I guess, how do you know**  
 4 **what you are allowed or not allowed to do as a**  
 5 **military police officer in the military if they**  
 6 **are not teaching you the laws, or how does it**  
 7 **work?**  
 8 A. If you are ever activated, deployed somewhere,  
 9 they would give you briefings on that. They'd  
 10 give you the rules of engagement and whatever  
 11 laws apply to whatever country you are in, then  
 12 you would get that training. But I never did.  
 13 **Q. And am I correct, civilian policing is a**  
 14 **paramilitary-type structure, whereas the**  
 15 **military is a military structure?**  
 16 A. That's right.  
 17 **Q. So much less discretion in the military;**  
 18 **correct?**  
 19 A. Well, I was never in that situation, so I can't  
 20 really say.  
 21 **Q. Well, when you were taught, did they tell you**  
 22 **that pretty much you are going to get orders**  
 23 **and you are going to follow them? Is that**  
 24 **pretty much how the military works?**  
 25 A. Pretty much, yes.

13

1 **Q. Okay. Separate and apart from the laws that**  
 2 apply to each venue, were you taught  
 3 hand-to-hand combat and tactics for, you know,  
 4 taking people into custody?  
 5 A. In the military?  
 6 **Q. Yes.**  
 7 A. We were. Yes, we did.  
 8 **Q. And at any point in time, did you become a**  
 9 certified trainer or a trainer?  
 10 A. No.  
 11 **Q. I saw something in records about combatives**  
 12 training. Does that mean anything to you?  
 13 A. Yes. That's -- yes. That's training that some  
 14 people go through.  
 15 **Q. And is that military?**  
 16 A. Yes.  
 17 **Q. And is that something where you were providing**  
 18 the information to others?  
 19 A. Me, no.  
 20 **Q. There was -- again, I'm not saying that the**  
 21 records are correct, but there's some  
 22 indication that because you had been a trained  
 23 law enforcement officer, that you were also  
 24 helping to provide the training to certain  
 25 persons taking that class?

14

1 A. No, not a combatives class. No.  
 2 **Q. Okay. Is there another situation where you**  
 3 were functioning, for lack of a better term, as  
 4 a use of force trainer?  
 5 A. No.  
 6 **Q. Are you certified to -- or were you ever**  
 7 certified to provide training to others?  
 8 A. I don't think so, no.  
 9 **Q. Even if you weren't certified or trained or**  
 10 officially assigned that task, were you ever  
 11 asked or did you ever provide training to  
 12 others?  
 13 A. I did some training, some very small-level  
 14 training, but it wasn't in combatives. It was  
 15 other -- I can't remember. It was so long ago.  
 16 I know, like, weapons training, training people  
 17 how to fire a handgun or a rifle in the  
 18 military, but it was very low-level thing,  
 19 small group kind of thing. Nothing big.  
 20 **Q. So was it more of an informal-type situation?**  
 21 A. Correct, yes.  
 22 **Q. And other than weapons, was there some of that**  
 23 type of training with respect to hand-to-hand  
 24 combat or grappling techniques?  
 25 A. No, not with -- not that included weapons, no.

15

1 **Q. I'm sorry?**  
 2 A. Nothing -- no, not that -- nothing that I  
 3 taught, no.  
 4 **Q. Okay. In the military, were you trained with**  
 5 respect to how to physically take somebody into  
 6 custody without weapons? So, meaning, it can  
 7 be joint manipulation, it can be takedowns.  
 8 Things of that nature.  
 9 A. I believe in 2009 when I was going through  
 10 basic training, we went through some sort of  
 11 training of that nature, learning how to  
 12 handcuff people and things like that. That's  
 13 all I can remember.  
 14 **Q. Did they -- in the military, did they ever**  
 15 provide you with training on how to take people  
 16 from a standing position to the ground?  
 17 A. I believe they did. I think so, yes.  
 18 **Q. Did they ever train you with respect to joint**  
 19 manipulation?  
 20 A. That I don't think so.  
 21 **Q. Did they train you with respect to various**  
 22 restraint holds?  
 23 A. No.  
 24 **Q. Did they train you with respect to any type of**  
 25 strikes, like hand or foot strikes or knee

16

1 strikes?  
 2 A. Yes.  
 3 **Q. Did they train you with respect to any type of**  
 4 restraints around the neck area?  
 5 A. No.  
 6 **Q. I saw another note, and I don't know if it was**  
 7 you, frankly, or another witness, but were you  
 8 involved in MMA-type fighting and training?  
 9 A. No.  
 10 **Q. You've never taken an MMA class?**  
 11 A. Never.  
 12 **Q. Never participated in an MMA fight or -- I**  
 13 **don't know what you would call it. We would**  
 14 **call it a fight?**  
 15 A. Never.  
 16 **Q. Were you ever trained by somebody who was**  
 17 involved with MMA?  
 18 A. Not that I know of.  
 19 **Q. How about in high school, did you wrestle?**  
 20 A. No.  
 21 **Q. Football? Any sports?**  
 22 A. Played a little bit of basketball. That was  
 23 it.  
 24 **Q. Okay. Didn't turn that into a career path?**  
 25 A. I did not.

17

1 **Q. All right. Fair enough. Did you have any**  
 2 sport-type activities outside of school?  
 3 A. I don't think so.  
 4 **Q. Like clubs or, you know, informal groups that**  
 5 would meet every week to, you know, play this,  
 6 that or the other thing? Anything like that?  
 7 A. I don't think so.  
 8 **Q. Did you have any friends whom you would wrestle**  
 9 with just for fun?  
 10 A. No. No.  
 11 **Q. Anybody -- any of your friends wrestlers?**  
 12 A. I don't think so. Not that I know of.  
 13 **Q. In the police academy, tell me a little bit**  
 14 about the use-of-force-type training. Not from  
 15 the legal side, but the tactic side. What  
 16 types of things were you taught?  
 17 A. Okay. I remember being taught strikes, like,  
 18 punches, kicks. Things of that nature.  
 19 Batons, the use of batons, handcuffing people,  
 20 some decentralizations a couple different ways,  
 21 pepper spray, firearms. That's it. I think  
 22 that's about it.  
 23 **Q. And back when you were going through the**  
 24 academy, didn't they also teach neck  
 25 restraints?

18

1 A. I don't think so.  
 2 **Q. Okay. What is -- just because it was kicked**  
 3 around yesterday just so it's clear on the  
 4 record, what is DAAT training, I guess they  
 5 refer to it as?  
 6 A. I think it stands for defense and arrest  
 7 techniques.  
 8 **Q. And is that something that was included in the**  
 9 academy -- the police academy or separate from  
 10 the police academy?  
 11 A. The training was in the police academy.  
 12 **Q. And what did that training consist of?**  
 13 A. All of the things I just told you, like the  
 14 striking, handcuffing, batons, that was all  
 15 considered DAAT.  
 16 **Q. Okay. And were you ever provided with any**  
 17 information with respect to force around the  
 18 neck region?  
 19 MS. BAYNARD: Object to the form of  
 20 the question.  
 21 Go ahead.  
 22 THE WITNESS: So I can answer the  
 23 question?  
 24 MS. BAYNARD: Yeah, you can answer  
 25 all of them.

19

1 THE WITNESS: Sorry, it was  
 2 confusing.  
 3 MS. BAYNARD: It's okay.  
 4 THE WITNESS: Can you ask me the  
 5 question again, please?  
 6 BY MR. JACOB:  
 7 **Q. Sure. I will clean it up a little bit. But**  
 8 with respect to use of force in the academy,  
 9 were you provided with any training that  
 10 discussed any type of force around the neck  
 11 region?  
 12 A. Not that I can remember.  
 13 **Q. Do you know what a rear naked chokehold is? I**  
 14 think that's how it's pronounced.  
 15 A. I think I do.  
 16 **Q. Okay. Tell me what you know about it.**  
 17 A. Well, after this all happened, I had to do some  
 18 research about it, and I guess it's a chokehold  
 19 of some sort.  
 20 **Q. Okay. Were you ever trained to apply or how to**  
 21 perform any type of neck restraint, neck hold?  
 22 A. I don't think so, no.  
 23 **Q. And so is it your testimony then before this**  
 24 incident and going into this incident, you had  
 25 never had any training, any experience in

20

1 applying neck holds to anybody?  
 2 A. That's right.  
 3 **Q. And that you knew nothing about what a rear**  
 4 naked chokehold was going into this incident?  
 5 A. I probably heard the term before this happened,  
 6 but I wasn't familiar with it.  
 7 **Q. And in what context do you think you may have**  
 8 heard the term before the incident?  
 9 A. I mean, it's just -- I don't know. Something  
 10 -- just a term that you may have heard in  
 11 conversation or on the TV or something like  
 12 that. I think I've heard that term before.  
 13 **Q. Am I correct, though, there were officers in**  
 14 the department during that time who were using  
 15 neck restraints?  
 16 A. Not that I know of.  
 17 **Q. You never saw that?**  
 18 A. No.  
 19 **Q. You never heard about that?**  
 20 A. No.  
 21 **Q. You never saw anybody or heard that anyone was**  
 22 trained to do that?  
 23 A. No.  
 24 **Q. Okay. Other than this police department, the**  
 25 Milwaukee Police Department, had you applied at



21

1 any other police department?  
 2 A. No, never.  
 3 **Q. So one department you apply to and you get**  
 4 **hired?**  
 5 A. Right.  
 6 **Q. And roughly, when did you start on the street?**  
 7 A. Sometime in 2009. I don't remember the exact  
 8 month.  
 9 **Q. And it's a rigorous application process, isn't**  
 10 **it? Hiring process, isn't it?**  
 11 A. I would say so, yes.  
 12 **Q. Can you just tell me the various steps without**  
 13 **-- you don't have to -- you know, the flyover**  
 14 **version.**  
 15 A. I don't remember every step, but I know it  
 16 involved things like a drug test, a physical  
 17 test, a background investigation, interviews.  
 18 Things of that nature. I don't remember what  
 19 else.  
 20 **Q. I think you said psychological testing? I**  
 21 **think you said that.**  
 22 A. That -- that was part of it, yes.  
 23 **Q. I'm assuming there's a written application?**  
 24 A. There must have been.  
 25 **Q. A written test?**

22

1 A. Yes. There is a written test, too, yeah.  
 2 **Q. Physical agility-type test?**  
 3 A. Right.  
 4 **Q. And then once you are hired, is there a**  
 5 **probationary period?**  
 6 A. There is.  
 7 **Q. And then eventually you join a union; correct?**  
 8 A. Correct.  
 9 **Q. And then you have the collective bargaining**  
 10 **protection; correct?**  
 11 A. I suppose, yes.  
 12 **Q. Well, yeah. I guess we will remove the**  
 13 **"Protection" word and just say you're apart of**  
 14 **a collective bargaining unit at that point;**  
 15 **correct?**  
 16 MS. BAYNARD: Objection, sorry, form  
 17 of the question, calls for speculation.  
 18 To the extent you know, go ahead.  
 19 THE WITNESS: I was --  
 20 BY MR. JACOB:  
 21 **Q. Let's pause there for a minute. So I'm not**  
 22 **speculating, I'm literally asking you were you**  
 23 **apart of the bargaining unit. Number two, I**  
 24 **only want you to answer what you know because**  
 25 **obviously you can only answer what you know.**

23

1 So go ahead.  
 2 A. I was a member of the police union. That's  
 3 what I know.  
 4 **Q. Have you ever been to an incident either in the**  
 5 **military or policing where a person has died as**  
 6 **a result of something a police officer has done**  
 7 **at that scene?**  
 8 A. Yes.  
 9 **Q. And did that happen before this incident?**  
 10 A. Yes.  
 11 **Q. And how many times do you think that has**  
 12 **happened?**  
 13 A. One time is all I can remember right now.  
 14 **Q. And without getting into the extreme details,**  
 15 **but what type of force was involved in that**  
 16 **incident?**  
 17 A. It was a shooting.  
 18 **Q. And were you involved in the shooting?**  
 19 A. No.  
 20 **Q. Have you ever -- other than this incident, have**  
 21 **you been involved in a use of force incident**  
 22 **where somebody has suffered a serious injury?**  
 23 A. No.  
 24 **Q. And after this incident, am I correct you were**  
 25 **on leave?**

24

1 A. After?  
 2 **Q. Yeah.**  
 3 A. After my incident?  
 4 **Q. Right.**  
 5 A. Yes.  
 6 **Q. And so you never went back to the street after**  
 7 **your incident?**  
 8 A. No.  
 9 **Q. With respect to the hiring process and while**  
 10 **you were employed, is there any screening that**  
 11 **is conducted for alcohol use?**  
 12 A. I don't think so.  
 13 **Q. How about drug use?**  
 14 A. There's a drug test before you can get hired,  
 15 and then there was a random drug test in the  
 16 academy. I remember that. And that's all I  
 17 can remember.  
 18 **Q. During the time of this incident -- when I say**  
 19 **"This incident," I mean, the one with Joel**  
 20 **Acevedo -- had anyone, friends, family,**  
 21 **whatever ever come to you and said, hey, you**  
 22 **might have an issue with alcohol?**  
 23 A. No.  
 24 **Q. Had you yourself recognized that you had an**  
 25 **issue and sought treatment?**

25

1 A. No.  
 2 **Q. Do you think that during that period of time**  
 3 you had an issue with alcohol?  
 4 A. I don't think so.  
 5 **Q. Even if people did not tell you that, do you**  
 6 think that others perceived you as potentially  
 7 having an issue with alcohol?  
 8 A. No.  
 9 MS. BAYNARD: Objection, calls for  
 10 speculation.  
 11 Go ahead.  
 12 THE WITNESS: Not that I know of.  
 13 BY MR. JACOB:  
 14 **Q. Before this incident, had you been involved in**  
 15 investigations related to your conduct where  
 16 your judgment was questioned?  
 17 A. Can I ask you what do you mean? I don't  
 18 understand.  
 19 **Q. Well, like, for instance, Internal Affairs when**  
 20 they said, you know, listen, we are wondering  
 21 why you decided to do X, Y and Z, we think that  
 22 that was just very poor judgment on your part.  
 23 Any type of investigation like that?  
 24 A. I've never had anybody tell me that that was  
 25 poor judgment or anything like that.

26

1 **Q. Before this incident, I realize it's kind of a**  
 2 hazard of the job, I'm assuming there had been  
 3 at least some complaints with respect to  
 4 policing, valid or otherwise, but I'm just  
 5 saying related to your conduct as a police  
 6 officer?  
 7 A. I remember I had one complaint from a citizen.  
 8 **Q. Just generally, what was the complaint?**  
 9 A. That I handcuffed him and he didn't like that.  
 10 **Q. I'm sure he didn't. Okay. And I'm assuming**  
 11 nothing came of that?  
 12 A. No.  
 13 **Q. During the time of this incident, did you have**  
 14 any mental health issues?  
 15 A. No.  
 16 **Q. Meaning, you weren't being treated for**  
 17 depression or anxiety?  
 18 A. No.  
 19 **Q. Had anyone ever told you you had an anger**  
 20 issue?  
 21 A. No.  
 22 **Q. And you never received treatment, went to anger**  
 23 management or anything like that?  
 24 A. No.  
 25 **Q. Before this incident, had you ever been**

27

1 arrested for anything?  
 2 A. No.  
 3 **Q. Are you originally from Wisconsin?**  
 4 A. Yes.  
 5 **Q. And from the Milwaukee area or a different**  
 6 area?  
 7 A. From Milwaukee.  
 8 **Q. And how old are you right now?**  
 9 A. 37.  
 10 **Q. And how tall are you?**  
 11 A. 6'3".  
 12 **Q. And I'm assuming you were 6'3" on the day of**  
 13 the incident?  
 14 A. I believe so, yes.  
 15 **Q. And roughly, how much do you think you weighed**  
 16 on the day of the incident?  
 17 A. Around 230.  
 18 **Q. Did you at that time have any physical or**  
 19 mental disabilities?  
 20 A. No.  
 21 **Q. And you had been on the job on the day of this**  
 22 incident roughly how long?  
 23 A. 13 or 14 years, I think. I can't remember.  
 24 **Q. And in what capacity did you function?**  
 25 Meaning, were you always a patrol officer or

28

1 did you have other assignments?  
 2 A. I was always a police officer.  
 3 **Q. And were you ever assigned specialized teams?**  
 4 A. I was.  
 5 **Q. And what types of teams were you assigned to?**  
 6 A. Well, I was at District 7 at the beginning of  
 7 my career. I was assigned to a anti-burglary  
 8 team, I guess you could say, and then I moved  
 9 to anti-gang unit at District 7. I later moved  
 10 to the Robbery Task Force, and that eventually  
 11 molded into the Special Investigation Division,  
 12 and that's where I remained until the end.  
 13 **Q. Did any of these assignments come with**  
 14 specialized use of force training?  
 15 A. I suppose, yes. Well, I will say this. When I  
 16 was on the Robbery Task Force in the Special  
 17 Investigation Division, we had training on how  
 18 to stop cars that nobody else could really do.  
 19 What did they call it? A positive vehicle  
 20 containment, I think, which is considered a use  
 21 of force, but it was basically blocking in a  
 22 car so they can't flee because so many cars  
 23 would flee. So I guess that's considered a use  
 24 of force. That's about it.  
 25 **Q. Okay. While you were a police officer after,**

29

1 you know, being trained in the academy, did you  
2 continue to actually practice use of force  
3 techniques in the training or was it just book  
4 stuff is what I'm asking?

5 A. We did do some practices. It was very little,  
6 very minimal, I would say, at, like, in-service  
7 training. Or maybe once a year or less, I  
8 can't remember exactly, we would do some sort  
9 of physical training in the gym at the police  
10 academy, which would consist of us, like, using  
11 a baton to strike a bag or things like that.

12 **Q. Just to make sure you could still literally**  
13 **function?**

14 A. Pretty much, yes.

15 **Q. Okay. Are you or were you ever the member of**  
16 **any professional organizations?**

17 A. Like what? I don't understand.

18 **Q. I don't know. You tell me. Are you a member**  
19 **of any associations or, you know, groups for**  
20 **policing or things of that nature?**

21 A. No.

22 **Q. With respect to social media just because it's**  
23 **a huge thing today, around the time of the**  
24 **incident or now, do you have any social**  
25 **media-type accounts?**

30

1 A. I had a Facebook account during this incident.  
2 I had to delete it afterwards because people  
3 were sending me threatening messages. So I had  
4 one, yes, but not anymore.

5 **Q. And I know you said deleted, but I also know**  
6 **some of these places maintain -- you can still**  
7 **get access to even if it's not public. Do you**  
8 **still have access to your social media,**  
9 **Facebook?**

10 A. I -- not my old one.

11 **Q. Okay. The old one with the messages that were**  
12 **on there that you indicated were threatening,**  
13 **were those messages saved somewhere or reported**  
14 **somewhere?**

15 A. I don't think so.

16 **Q. So if I were to ask you, for instance, hey, can**  
17 **you give us those messages, would you be able**  
18 **to?**

19 A. I don't think so.

20 **Q. The Facebook, the old one, what was it titled**  
21 **or what was the username? What do you call it?**  
22 **A profile name?**

23 A. I think it was just my name.

24 **Q. And your current one, same?**

25 A. No.

31

1 **Q. Okay. And does the current one have anything**  
2 **related to policing, this incident or the**  
3 **litigation?**

4 A. Not at all.

5 **Q. Even if you are not posting it, has anybody**  
6 **else posted anything to the new one?**

7 A. No.

8 **Q. We had a deposition or took a deposition of a**  
9 **representative of the city just to basically**  
10 **kind of get the lay of the land, and I want to**  
11 **show you a few things just to see if you are in**  
12 **agreement. We went in on that deposition in a**  
13 **different order than I'm going to use with you,**  
14 **so just bear with me a second if you would.**

15 First of all, I'm going to show a  
16 document that was marked Exhibit 8. Is that a  
17 document that you've seen before?

18 A. I believe so.

19 **Q. And what do you believe that to be?**

20 A. Well, it says right on there, "Milwaukee Police  
21 Department Oath of Office."

22 **Q. And is that something that was explained to**  
23 **you?**

24 A. I would think. It had to have been. I don't  
25 remember, but, I mean, I would believe so, yes.

32

1 **Q. But you agree, you did take an oath when you**  
2 **took the office or were given the office of a**  
3 **police officer?**

4 A. Yes.

5 **Q. And what did you understand the oath to require**  
6 **of you?**

7 A. I don't remember. I haven't seen this in many  
8 years.

9 **Q. Okay. Showing you a document marked Exhibit**  
10 **Number 9. Have you seen this before?**

11 A. I -- yes, I have.

12 **Q. And what is that?**

13 A. The Milwaukee Police Department Code of Conduct  
14 booklet.

15 **Q. And what does that document mean to you?**

16 A. It's the -- it says right here, the core values  
17 and guiding principles of the Milwaukee Police  
18 Department.

19 **Q. And were you ever told what that means to you**  
20 **as a police officer?**

21 A. I don't.

22 **Q. Meaning, were you required to conduct yourself**  
23 **in accordance with the code of conduct?**

24 A. I believe we were, yes.

25 **Q. Was it ever explained to you?**



33

1 A. I don't think so, no.  
 2 **Q. Was there ever any training with respect to**  
 3 what that code meant you were required to do?  
 4 A. Not that I remember.  
 5 **Q. Were you ever trained with respect to what that**  
 6 code limited you from doing?  
 7 A. I'm not sure. I don't -- I don't --  
 8 **Q. Showing you a document marked Exhibit Number 5.**  
 9 If you take a moment to look through it, do you  
 10 know what that is?  
 11 A. I don't think I've ever seen this.  
 12 "Preparatory Law Enforcement Officer Training  
 13 Transcript" is what it says, but I've never --  
 14 I don't think I've ever seen this. Is this a  
 15 list of -- it looks like it's a list of all the  
 16 in-service training that I had throughout the  
 17 years.  
 18 **Q. Okay. But as you look at it, you can't tell me**  
 19 with certainty what this document represents?  
 20 A. Well, it looks to represent the -- like I said,  
 21 it says on the top, "Preparatory Law  
 22 Enforcement Officer Training Transcript" with  
 23 my name on it. So it's a training transcript.  
 24 **Q. All right. Do you have any reason to believe**  
 25 that that is not a training transcript for you

34

1 when you went through the academy? At least  
 2 the first part, I'm sorry, because it -- you  
 3 had flipped to other pages.  
 4 A. Yeah. It does have years of 2017, 2018 I'm  
 5 looking at, and I was in the academy in 2009,  
 6 so I don't know. It looks like it's in-service  
 7 transcript.  
 8 **Q. Okay. You're just not sure, though, as you**  
 9 look at it?  
 10 A. Like I said, I've never seen this before.  
 11 **Q. I'm showing you -- actually, let's do this one**  
 12 first. I'm showing you a document marked  
 13 Exhibit Number 7. Do you know what that is?  
 14 A. It looks like a piece of paper with my  
 15 signature on it acknowledging that I received  
 16 the police department's rules and procedures  
 17 manual.  
 18 **Q. And am I correct when you first started it was**  
 19 paper form?  
 20 A. It was, yes.  
 21 **Q. Eventually switched over to an electronic**  
 22 format?  
 23 A. Correct.  
 24 **Q. So initially you signed for it in paper form,**  
 25 and then eventually electronically. Is that

35

1 fair?  
 2 A. Yes.  
 3 **Q. I'm going to show you a document marked Exhibit**  
 4 Number 6. Have you ever seen this document or  
 5 something similar where it acknowledges that  
 6 you received certain policies and procedures?  
 7 A. I've never seen this document before, no.  
 8 **Q. Do you at least agree, though, that at various**  
 9 times during your employment as a police  
 10 officer, you were provided with policies from  
 11 the department that you are required to sign  
 12 for?  
 13 A. Yes.  
 14 **Q. And it wasn't just day one and then never**  
 15 again. As policies changed or were revised,  
 16 they were provided to you?  
 17 A. Can you say that again?  
 18 **Q. As policies were changed or revised throughout**  
 19 your career, they were provided to you?  
 20 A. Yes.  
 21 **Q. And you were expected to sign for those?**  
 22 A. Yes, we were.  
 23 **Q. And were you ever told once you received it --**  
 24 let's ask it that way. Once you received it,  
 25 did they ever give you instructions other than

36

1 just sign for receipt?  
 2 A. No.  
 3 **Q. I mean, were you ever told you need to read**  
 4 this?  
 5 A. I don't think so, no. They just said we need  
 6 to acknowledge it or sign it like I said.  
 7 **Q. Did anyone sit down with you when you would**  
 8 receive these policies and explain them to you?  
 9 A. No.  
 10 **Q. Did anyone come to you when you received these**  
 11 policies and ask if you had any questions about  
 12 them?  
 13 A. No.  
 14 **Q. Other than simply signing receipt for policies,**  
 15 do you recall the policies being discussed any  
 16 further with you?  
 17 A. Only certain ones like at an in-service  
 18 training. And it was normally in reaction to  
 19 some incident that happened so they would give  
 20 us better clarification on the SOP and they  
 21 finally changed the SOP because of the  
 22 incident. That's usually how it goes.  
 23 **Q. So am I correct -- and I don't want to put**  
 24 words in your mouth -- you would receive a  
 25 policy, there would be no discussion, no

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1 training, no reading, no asking if there's  
 2 questions, an incident would happen, and then  
 3 you would be told, hey, this is what should  
 4 have happened?  
 5 A. Yes, that would happen a lot.  
 6 **Q. Hey, because this happened, we are going to**  
 7 **change X, Y and Z?**  
 8 A. Correct.  
 9 **Q. I'm going to show you a document marked Exhibit**  
 10 **Number 4. Have you ever seen this before?**  
 11 A. It's a -- one of the SOPs, but I don't know  
 12 what this one is.  
 13 **Q. Okay.**  
 14 A. Early intervention.  
 15 **Q. As you sit here today, you don't recall that**  
 16 **policy. All you can say is that it's written**  
 17 **on it that it's a policy. Is that fair?**  
 18 A. Right.  
 19 **Q. Do you remember, though, being subjected to a**  
 20 **policy that basically said they are going to be**  
 21 **monitoring your conduct as a police officer?**  
 22 A. I don't remember that. I don't remember all of  
 23 the policies.  
 24 **Q. I understand.**  
 25 A. There were so many, so I don't remember that

38

1 specific one.  
 2 **Q. Okay. I'm going to show you a document marked**  
 3 **Exhibit Number 2. Is this a document that you**  
 4 **can identify?**  
 5 A. This one says standard operating procedure for  
 6 arrest authority from Milwaukee Police  
 7 Department.  
 8 **Q. Okay. During the time of this incident that we**  
 9 **are here to discuss today, am I correct that**  
 10 **was a policy that you were required to follow?**  
 11 A. I believe so.  
 12 **Q. And despite being required to follow, had**  
 13 **anybody trained you with respect to what that**  
 14 **policy meant?**  
 15 A. Well, I mean, there's a lot in this policy.  
 16 **Q. I don't want you guessing. Only if you**  
 17 **remember.**  
 18 A. I don't remember any specific training for this  
 19 specific policy, so no.  
 20 **Q. Okay. I'm going to show you a document marked**  
 21 **Exhibit Number 3. Do you know what that is?**  
 22 A. This is another standard operating procedure on  
 23 use of force.  
 24 **Q. And would you agree with me that during the**  
 25 **time of this incident that was a policy that**

39

1 you were required to comply with?  
 2 A. Yes.  
 3 **Q. And same question as the other one, do you**  
 4 **recall when you received that policy anyone**  
 5 **sitting down and going through it with you**  
 6 **making sure you understood what it meant?**  
 7 A. I don't think anybody has ever sat down with me  
 8 and -- with the policy and said this is what  
 9 this means, this is what this means. It's  
 10 never happened.  
 11 **Q. So after the academy, did you have a field**  
 12 **training program?**  
 13 A. I did.  
 14 **Q. And during the field training program, were --**  
 15 **was one section related to policies?**  
 16 A. Not that I remember. Not in field training.  
 17 **Q. At any point in time either in the academy,**  
 18 **field training or roll call training, did**  
 19 **anyone say, okay, today we are going to review**  
 20 **the use of force policy and we are just going**  
 21 **to, you know, go through the highlights of it?**  
 22 **Any type of training like that even?**  
 23 A. Possibly. I can't remember. I mean, I sat  
 24 through probably over a thousand roll calls,  
 25 and it's whatever pertinent information

40

1 happened from the shift before and things like  
 2 that. And it's possible we could have gone  
 3 over things like this, but I don't remember.  
 4 **Q. You just have no independent recollection now?**  
 5 A. Right.  
 6 **Q. But you are not saying it didn't happen?**  
 7 A. It could have happened, but I don't remember.  
 8 **Q. Okay. We talked about the police academy, we**  
 9 **talked about in-service. I guess it was**  
 10 **yearly, correct, the re-trainings?**  
 11 A. Once -- once or twice a year. I can't  
 12 remember.  
 13 **Q. Okay. And we talked about roll call. Now, I**  
 14 **just assumed, and I shouldn't have, that**  
 15 **there's roll call training as opposed to just a**  
 16 **briefing. What do you recall as far as --**  
 17 A. Roll call is more of just, like, a briefing.  
 18 Kind of like a before your shift briefing,  
 19 basically. There's no actual training, it's  
 20 quick. It's usually five to ten minutes and  
 21 just discuss -- usually the supervisor will  
 22 discuss -- they will give you your assignment  
 23 for the day and they'll discuss if something  
 24 major happened the shift before or night before  
 25 or something like that, and that's about it.

41

- 1 **Q. Okay. Other than the, you know, in-service and**  
 2 **the academy, do you recall any other type of**  
 3 **training maybe specific to your shift? I've**  
 4 heard of some departments when I was associated  
 5 with where if it got slow, we would all collect  
 6 somewhere and we would do an informal training.  
 7 Anything like that?  
 8 A. No.  
 9 **Q. Hang on one second. With respect to your**  
 10 training, I think we discussed it, there were  
 11 hand-to-hand tactics that you were trained in  
 12 the academy; correct?  
 13 A. Yes.  
 14 **Q. Were you provided with any medical training?**  
 15 A. I'm sure I was, but I don't remember what the  
 16 extent of it was.  
 17 **Q. Okay. With respect to the hand-to-hand combat,**  
 18 for lack of a better term, type training, was  
 19 it ever discussed the medical issues that could  
 20 arise with certain types of uses of force?  
 21 A. I really don't remember.  
 22 **Q. Meaning, for instance, pepper spray. Did you**  
 23 guys carry pepper spray?  
 24 A. We did.  
 25 **Q. And were you trained that, hey, once you pepper**

42

- 1 spray somebody, they are going to have a  
 2 medical reaction, you need to decontaminate  
 3 them?  
 4 A. Well, yeah. Yes. After you get pepper  
 5 sprayed, you have to flush your eyes out for  
 6 quite a while before it can -- before it goes  
 7 away.  
 8 **Q. With respect to Tasers, did you guys have**  
 9 Tasers?  
 10 A. I personally never had a Taser.  
 11 **Q. Did you go through any Taser training?**  
 12 A. In the Army I did, but not in the police -- I  
 13 never had one as a police officer.  
 14 **Q. Okay. We can utilize that for purposes of what**  
 15 I'm trying to ask, though. When you went  
 16 through your Taser training in the military,  
 17 did they explain, hey, medically this could  
 18 happen to an individual so you need to be aware  
 19 of this?  
 20 A. I think so.  
 21 **Q. With respect to the hand-to-hand techniques in**  
 22 the police academy or during in-service or any  
 23 other time, were you ever trained, hey, listen  
 24 if you're -- you know, if you operate around  
 25 the head or the neck, these are things that

43

- 1 medically you need to watch for?  
 2 A. I -- I don't really remember a whole lot about  
 3 the academy because it was so long ago. And I  
 4 don't know. It was a fast-moving time, and I  
 5 just -- I can't remember specifics anymore.  
 6 **Q. Even if you don't remember specifics, let's**  
 7 **just say, for instance, on the date of this**  
 8 **incident, do you recall, even if you don't**  
 9 remember exactly what it was, that, yeah, I had  
 10 been trained to look for certain things  
 11 medically with respect to certain types of  
 12 force that I may use?  
 13 A. Nothing -- I can't remember anything specific  
 14 right now.  
 15 **Q. Okay. Do you recall ever being trained with**  
 16 respect to a deescalation policy?  
 17 A. I remember -- I remember the word  
 18 "Deescalation," and I remember them having a  
 19 chart of different steps they want you to take  
 20 in a situation. Yes.  
 21 **Q. Okay. So it was your understanding that even**  
 22 if you don't remember the specifics right now,  
 23 you were expected to engage in deescalation if  
 24 and when possible?  
 25 A. Correct.

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- 1 **Q. And with respect to use of force -- I think you**  
 2 already identified a policy -- do you recall  
 3 any other use of force-type policies? Meaning,  
 4 separate from it, like a neck restraint policy,  
 5 or a Taser policy, or a pepper spray policy?  
 6 A. I thought all of that is -- would be covered  
 7 under the use of force. Except for the neck  
 8 restraint thing, I don't think that was in any  
 9 policies. But I think everything was covered  
 10 under use of force policy, I believe.  
 11 **Q. Okay. Do you recall whether you were ever**  
 12 trained about the positioning of an individual  
 13 who is taken into custody?  
 14 A. Yes.  
 15 **Q. And what do you recall about that?**  
 16 A. Well, it depends on what -- what position a  
 17 person is in when they are taken into custody.  
 18 **Q. Okay. Can you explain a little bit more?**  
 19 A. Like, for instance, handcuffing, I remember  
 20 training on how to handcuff a person while they  
 21 are standing and when they are on the ground.  
 22 Yeah, that's about it.  
 23 **Q. Do you recall any training with respect to**  
 24 medical complications that can result based on  
 25 the position that a person is in when they are

45

1 in custody?

2 MS. BAYNARD: I'm just -- when you  
3 say "custody," what do you mean?

4 BY MR. JACOB:

5 **Q. That's fair.**

6 When you have somebody whose movement  
7 is restrained in any capacity, do you recall  
8 any training with respect to medical  
9 complications that can result based on  
10 positioning of the person?

11 A. I really don't remember specifics in that area,  
12 no.

13 **Q. Without necessarily remembering the specifics,**  
14 do you recall, though, that, yes, I was  
15 trained, I just can't as I sit here today tell  
16 you what it is, or no, I don't think we were  
17 ever trained on that?

18 A. It's possible we were trained on that and I  
19 just don't remember the specifics of it.

20 **Q. Okay. How about same question with respect to**  
21 putting pressure on somebody's back when they  
22 are on their stomach, do you recall any  
23 training with respect to the dangers that may  
24 be associated with that?

25 A. Not that I remember, no.

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1 **Q. Do you recall any training with respect to when**  
2 you have somebody whose movement you've  
3 restricted in any way that you need to monitor  
4 them medically?

5 A. I mean, yes, that's always something that you  
6 could do.

7 **Q. I'm not asking could do. I'm asking were you**  
8 trained that, yes, that's something we were  
9 required to do?

10 A. I'm sure we were. I just -- like I said, I  
11 can't remember the specifics of it.

12 **Q. Okay. So you are sure you received it, you**  
13 just don't remember the details. Is that fair?

14 A. I would say so, yes.

15 **Q. Do you recall any training or rules that said,**  
16 hey, you are only permitted to use certain  
17 tactics, hand-to-hand tactics that were trained  
18 to you in the academy?

19 A. No.

20 **Q. Meaning, you were taught in the academy, I**  
21 guess, what we would call best practices;  
22 correct?

23 A. Correct.

24 **Q. But you were never told these are the only**  
25 types of restraints, for instance, that you are

47

1 permitted to use?

2 A. Right.

3 **Q. Let's back up a little bit. What is your**  
4 understanding of the reason for a policy? Just  
5 generally, what does policy do? What's the  
6 purpose of policy?

7 MS. BAYNARD: Object on the basis of  
8 foundation.

9 Go ahead.

10 THE WITNESS: Policy is a rule that  
11 whatever the department wants you to follow.

12 BY MR. JACOB:

13 **Q. Okay. So I think you said "rule." Would you**  
14 agree with me that the one purpose of policy is  
15 to protect police officers?

16 A. No.

17 **Q. No. Would you agree with me, though, that when**  
18 you have a policy that explains to the officer  
19 how they are supposed to perform something,  
20 that that helps the officer to remain safe  
21 around the job?

22 A. I don't think so, no.

23 **Q. Would you agree with me that a policy can help**  
24 to protect individuals with whom a police  
25 officer comes into contact?

48

1 A. Say that again.

2 **Q. Would you agree with me that policy can help to**  
3 protect persons with whom a police officer  
4 comes into contact?

5 A. Possibly. Depends on the policy, depends on  
6 the situation, you know. It could be -- could  
7 be yes, could be no.

8 **Q. It's your understanding, though, I think you**  
9 said, though, that policy is the employer  
10 telling the employee their expectations on how  
11 something is supposed to be done; correct?

12 A. That's fair.

13 **Q. And then training, am I correct that training**  
14 explains how to implement the policy?

15 A. That's fair.

16 **Q. And would you agree with me that training --**  
17 the purpose of training is also to protect the  
18 police officer and the individual with whom  
19 they come into contact?

20 A. Not necessarily.

21 **Q. Okay. In what scenarios would training make it**  
22 more dangerous for a police officer or with a  
23 person with whom they come into contact?

24 A. Well, I will say this. In the police academy,  
25 they would -- I remember them teaching us



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1 certain things of like how to strike, how to  
 2 kick, and things like that, and they are what I  
 3 thought to be completely unrealistic for a real  
 4 life situation. And if you were to do that in  
 5 the street in a real life situation, you can  
 6 get yourself hurt and not be an effective  
 7 police officer.  
 8 **Q. Okay. Do you remember either in the academy or**  
 9 just generally it being said that better to be  
 10 judged by twelve than be carried by six?  
 11 A. I've heard that, but I don't know if I heard  
 12 that in the academy.  
 13 **Q. And in what context did you hear that?**  
 14 A. I've just heard the saying before. I don't  
 15 remember the context of it.  
 16 **Q. Do you recall -- well, what years did you go**  
 17 **through the academy?**  
 18 A. It was in 2009.  
 19 **Q. Okay. So I will ask it this way. Do you**  
 20 **recall being told, hey, you need to come home**  
 21 **at the end of your shift?**  
 22 MS. BAYNARD: Objection to the form  
 23 of the question.  
 24 Go ahead.  
 25 THE WITNESS: I remember things being

50

1 said like that, yes.  
 2 BY MR. JACOB:  
 3 **Q. Did you recall being told every incident can**  
 4 **turn into a deadly incident?**  
 5 A. Yes.  
 6 **Q. And do you recall being told that you should**  
 7 **approach every incident as if it's a threat to**  
 8 **your life or someone else's?**  
 9 A. I don't know about that.  
 10 **Q. Actually, not a fair question. Were you**  
 11 **being -- were you told that you should approach**  
 12 **every incident as it could develop into a**  
 13 **threat to yourself or somebody else?**  
 14 A. Yes, that's fair.  
 15 **Q. So even a parking ticket, for instance, you**  
 16 **should be prepared for that to deescalate into**  
 17 **something that could become life threatening?**  
 18 A. It's possible, yes.  
 19 **Q. But, I mean, you were always told be on guard,**  
 20 **be ready for that; correct?**  
 21 A. That's correct.  
 22 MS. BAYNARD: Sorry. Object to the  
 23 form of the question.  
 24 Go ahead.  
 25 BY MR. JACOB:

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1 **Q. Is that correct?**  
 2 A. That's fair.  
 3 **Q. During the deposition yesterday, there was some**  
 4 **discussion about former Chief Morales, his**  
 5 **employment situation that eventually happened**  
 6 **with the city and the FPC. Were you -- you**  
 7 **worked under Chief Morales for a period of**  
 8 **time; correct?**  
 9 A. I did.  
 10 **Q. What we learned yesterday during the deposition**  
 11 **is there may have been some suspicions on the**  
 12 **part of the FPC with respect to a culture that**  
 13 **was not necessarily the best over at the police**  
 14 **department under his supervision. Do you know**  
 15 **anything about that?**  
 16 A. No.  
 17 **Q. Meaning, where -- for instance, maybe that**  
 18 **certain types of force were permitted that**  
 19 **shouldn't have been?**  
 20 MR. MUCHE: I am just going to object  
 21 that may mischaracterize the testimony.  
 22 BY MR. JACOB:  
 23 **Q. And, actually, fair. My question was poor.**  
 24 I'm asking, do you recall one of the  
 25 complaints being that, you know, force was

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1 permitted that maybe shouldn't have been?  
 2 A. No.  
 3 **Q. Do you remember like an "us vs. Them" mentality**  
 4 **between police and citizens?**  
 5 A. No. No.  
 6 **Q. When you were out on the street, you had a lot**  
 7 **of interaction with the general population;**  
 8 **correct?**  
 9 A. I did.  
 10 **Q. And what was the feel out there? Did you feel**  
 11 **that the population trusted the police or were**  
 12 **suspicious of the police?**  
 13 MS. BAYNARD: Objection to the form  
 14 of the question, calls for speculation.  
 15 Go ahead.  
 16 BY MR. JACOB:  
 17 **Q. No, I'm not asking you to speculate. I'm**  
 18 **asking what did you determine from your**  
 19 **interactions whether there was any indication**  
 20 **that they were trusted, not trusted?**  
 21 A. Well, that changed over time. When I first  
 22 started, it was different. People respected  
 23 the police and criminals feared the police, and  
 24 the victims of crimes and the innocent people  
 25 that lived in these bad neighborhoods were --



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1 wanted us there. They were glad when we could  
2 help them because people who lived in the bad  
3 neighborhood in Milwaukee were scared.

4 As time went on, like to 2020 when  
5 this incident happened, the attitude towards  
6 police deteriorated very badly, and it was  
7 every day people would walk down the street and  
8 yell eff you, eff you. The things -- the  
9 disrespect ramped up. And the amount of people  
10 that were bold enough to resist the police and  
11 shoot at the police and fight the police ramped  
12 up noticeably in the year 2020.

13 **Q. And you were talking about before this incident**  
14 **with Joel?**

15 A. Correct.

16 **Q. Did you perceive it to become more dangerous**  
17 **for police officers in the community in which**  
18 **you were serving?**

19 A. Absolutely. And that's because before when I  
20 started, there was not a police officer killed  
21 on duty for many years. I think it was over  
22 ten years or more than that. And then all the  
23 sudden there was three killed within one year.  
24 So, yes, extremely.

25 **Q. And did the culture in the police department**

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1 the beginning of my shift, but then you get  
2 called immediately. As soon as -- as soon as  
3 you get to work, you get called on the street  
4 to go take a call immediately, so there's no  
5 time to read.

6 **Q. So I'm hearing you say the city provides me**  
7 **with a policy, I'm required to sign for it or I**  
8 **can get disciplined; correct?**

9 A. Correct.

10 **Q. But at the same time, I'm required to comply**  
11 **with the policy, but I haven't been provided**  
12 **with time to review it. Is that fair?**

13 A. That's fair.

14 **Q. And I'm required to comply with the policy, but**  
15 **nobody sat me down and discussed it with me to**  
16 **ask me if I had any questions or explained this**  
17 **policy to me; is that correct?**

18 A. That's right.

19 **Q. Around the time of this incident, was there any**  
20 **discussion before the Joel incident about**  
21 **whether any type of neck restraint, chokehold,**  
22 **any of that, whether that was even permitted to**  
23 **be used in the police department?**

24 A. I don't think there was any -- any neck  
25 restraints or anything like that ever. In the

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1 change from a, hey, we are kind of one with the  
2 community to this community is kind of after us  
3 a little bit?

4 A. It did seem like the community was after us.  
5 Some parts of the community, not all of the  
6 parts of the community. It was -- "the  
7 community" is a broad statement. Some people  
8 were against us for sure, some people were not.

9 **Q. Going back to policies and training. If the**  
10 **department gave you a policy, did you always**  
11 **try to comply with policy when it was safe to**  
12 **do so?**

13 A. I would always try to do the right thing. I  
14 was not always 100 percent aware of what all  
15 the policies were. Although because there's  
16 thousands of pages of reading to do and it's  
17 not realistic when you are working in a busy  
18 city, it's almost impossible to read thousands  
19 of pages of policies. So I personally would  
20 try to do the right thing in every situation I  
21 was in.

22 **Q. Were you ever provided with time during your**  
23 **employment to actually have an opportunity to**  
24 **review these policies?**

25 A. No. I remember trying to read some of them in

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1 police department, I don't think there was any.

2 **Q. So not taught to police officers; correct?**

3 A. Right.

4 **Q. But, also, police officers never were told that**  
5 **you are not permitted to do neck restraints or**  
6 **chokeholds; correct?**

7 A. Well, I mean, there was no policy about it.  
8 There's just no talk about it ever. I guess  
9 I've never --

10 **Q. Just wasn't an issue?**

11 A. Right.

12 **Q. One way or the another?**

13 A. Right.

14 **Q. Never cautioned during training, hey, listen,**  
15 **you know, you are going to be taking people to**  
16 **the ground, going to be wrestling around, but**  
17 **never go around their neck unless it's a deadly**  
18 **force incident. Nobody ever told you that;**  
19 **correct?**

20 A. Not that I remember.

21 MR. JACOB: Okay. This would be a  
22 good time to break for five minutes before I go  
23 to the next section. Does that sound good?

24 MS. BAYNARD: Yeah.

25 (Recess.)

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1 BY MR. JACOB:  
 2 **Q. We just had an opportunity to take a break.**  
 3 Are you prepared to proceed?  
 4 A. Yes.  
 5 **Q. When you become a police officer, you are**  
 6 issued a badge; is that correct?  
 7 A. Yes.  
 8 **Q. And you're issued ID?**  
 9 A. Yes.  
 10 **Q. And where would you -- generally when you were**  
 11 off duty, where did you keep your ID?  
 12 A. Well, that changed throughout the years. I did  
 13 things differently. My ID, I think I used to  
 14 keep it in my wallet or I had a little lanyard  
 15 that I would wear. And, yeah, that was it.  
 16 **Q. Okay. So it was always with you somewhere. Is**  
 17 that fair to say?  
 18 A. I think I would -- I think so. When I would  
 19 carry it, it was in my wallet and my wallet was  
 20 with me. And my lanyard, I would bring that  
 21 home with me to and from work because it also  
 22 worked as an ID or like a --  
 23 **Q. Badge holder?**  
 24 A. To scan into the buildings. So you needed it  
 25 to get into work, so yes, I would take it with

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1 me.  
 2 **Q. And when you got home, where would you**  
 3 generally keep it? Let's just narrow it down  
 4 to the year of this incident. What was your  
 5 general practice?  
 6 A. I had an office and I would usually put it on  
 7 my desk.  
 8 **Q. In your -- in your house?**  
 9 A. Right.  
 10 **Q. When you say on your desk, was it in a wallet**  
 11 on your desk or was it just actually on your  
 12 desk? Like, you know, taken out of the wallet?  
 13 A. I think around the time of this incident in  
 14 2020, I believe I was wearing -- I had a  
 15 lanyard and I would just put the whole thing on  
 16 my desk.  
 17 **Q. So if you're home, your ID is home with you**  
 18 somewhere in that house?  
 19 A. Yes.  
 20 **Q. And readily accessible to you?**  
 21 A. Well, it's in the house.  
 22 **Q. Meaning, if somebody came to the front door and**  
 23 said I need to see your ID, you could go get it  
 24 and bring it to them; correct?  
 25 A. Right.

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1 **Q. It wasn't lost or misplaced?**  
 2 A. No.  
 3 **Q. And on the date of this incident, you had it.**  
 4 It hadn't been lost or misplaced; correct?  
 5 A. I don't remember exactly on the day where my ID  
 6 was. I'm assuming it was on the desk, but I  
 7 don't -- I can't tell you for sure.  
 8 **Q. But there was no reason for you to believe that**  
 9 it wasn't on your desk where you would normally  
 10 put it; correct?  
 11 A. That's -- that sounds about right.  
 12 **Q. Meaning, it wasn't that on the date of this**  
 13 incident was the first date you decided to  
 14 leave it at work; correct?  
 15 A. I mean, that's possible. I just don't  
 16 remember.  
 17 **Q. All right. But as you sit here, you have no**  
 18 reason to believe that it wasn't on your desk?  
 19 A. That's where I would think it was.  
 20 **Q. Okay. I saw that the department does not or**  
 21 did not during that period of time say you  
 22 absolutely could not perform the job of a  
 23 police officer while off duty. Was that your  
 24 understanding that you could perform the job of  
 25 a police officer while off duty?

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1 A. Yes, that's my understanding.  
 2 **Q. I also saw in the policy with respect to being**  
 3 off duty that the policy did not say you  
 4 absolutely cannot perform the job of a police  
 5 officer while you've consumed alcohol. Is that  
 6 your understanding?  
 7 A. Yes.  
 8 **Q. And that simply the policy discouraged**  
 9 performing off duty while consuming alcohol.  
 10 Is that your understanding?  
 11 A. Yes.  
 12 **Q. If the policy had said you are precluded, you**  
 13 absolutely may not take any action as a police  
 14 officer while consuming alcohol, would you have  
 15 done your best to comply with that policy? And  
 16 I'm not saying with respect to this incident.  
 17 I'm sorry, let me rephrase it.  
 18 I'm just saying generally, as long as  
 19 it was not safe to comply, meaning, to -- or  
 20 shouldn't be to comply, meaning, not to get  
 21 involved. Would you agree with me if the  
 22 policy said you may not get involved while you  
 23 drank any alcohol, would you have done your  
 24 best not to get involved?  
 25 A. I mean, that depends on what -- you know,

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1 depends on the circumstances. I can't really  
 2 answer that.  
 3 **Q. Okay. And that's because there are situations**  
 4 **that just arise that cannot be prevented; is**  
 5 **that correct?**  
 6 A. That's fair, I suppose.  
 7 **Q. Now, it's no secret, you admitted it that you**  
 8 **had at least consumed alcohol on the night in**  
 9 **question; correct?**  
 10 A. I did, yes.  
 11 **Q. But there's a question about this issue of**  
 12 **impairment and judgment. Did you believe that**  
 13 **you had consumed alcohol to a point where you**  
 14 **were impaired that your judgment was just**  
 15 **clouded?**  
 16 A. I don't think so.  
 17 **Q. So while you may -- for instance, if you**  
 18 **slurred your words, you could still think**  
 19 **clearly. Is that fair?**  
 20 A. That's fair.  
 21 **Q. That nothing led you to believe that your**  
 22 **judgment was way off on that night; correct?**  
 23 A. No, I don't think so.  
 24 **Q. And that was not the first night that you had**  
 25 **ever consumed alcohol in your life; correct?**

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1 A. No.  
 2 **Q. So presumably, you knew personally how your**  
 3 **body reacts to the consumption of alcohol;**  
 4 **correct?**  
 5 A. Right.  
 6 **Q. And did you know or had you ever -- not that**  
 7 **night, but had you ever in your life consumed**  
 8 **alcohol to a point where you knew, yeah, my**  
 9 **judgment is a little off now?**  
 10 A. Ever? I'm sure I have in the past.  
 11 **Q. Okay. And that was not this night, though;**  
 12 **correct?**  
 13 A. No.  
 14 **Q. I'm sorry, yes, it's correct that that was not**  
 15 **this night that you were to a point where,**  
 16 **yeah, my judgment is way off here?**  
 17 A. I didn't feel that way that night, no.  
 18 **Q. And having had that happen at some point in**  
 19 **your life, you would have recognized it if it**  
 20 **was going on that night; correct?**  
 21 A. I would think so.  
 22 MS. BAYNARD: I just want to clarify.  
 23 When you are saying "night," you mean, the  
 24 night --  
 25 MR. JACOB: I'm sorry. The day --

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1 MS. BAYNARD: Yeah. The next morning  
 2 at 7:30. At any point --  
 3 MR. JACOB: Next morning, day.  
 4 MS. BAYNARD: Right.  
 5 BY MR. JACOB:  
 6 **Q. Sorry. Fair. Yes, fair.**  
 7 Now, on the date in question -- and  
 8 let's just put that on the record -- it was  
 9 Sunday, April 19th, 2020; correct?  
 10 A. Correct. That was the morning.  
 11 **Q. Okay.**  
 12 A. Sunday morning.  
 13 **Q. So that's the morning when Joel Acevedo and**  
 14 **yourself and others had this incident that**  
 15 **results in police coming to your residence;**  
 16 **correct?**  
 17 A. Right.  
 18 **Q. And on that date, you were employed by the City**  
 19 **of Milwaukee Police Department as a police**  
 20 **officer; correct?**  
 21 A. I was.  
 22 **Q. And you were still in good standing as a police**  
 23 **officer; correct?**  
 24 A. I was.  
 25 **Q. Your certification wasn't suspended or anything**

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1 like that; correct?  
 2 A. No, it was not.  
 3 **Q. Now, the night before, so now we are on the,**  
 4 **what, Saturday, the 19th, I guess. Let me see.**  
 5 **Oh, Saturday the 18th; is that correct? You**  
 6 **have a social gathering at your house. Is that**  
 7 **fair to say?**  
 8 A. Yes.  
 9 **Q. And tell me a little bit about that. What was**  
 10 **it supposed to be or what was it intended to**  
 11 **be?**  
 12 A. Just -- it was just the four of us sitting  
 13 around a fire, having a couple drinks. It was  
 14 a very uneventful kind of boring night, to be  
 15 honest.  
 16 **Q. And the four of you, that would be who?**  
 17 A. Me, Joel, Christopher Peters and Andrew  
 18 Janowski.  
 19 **Q. Now, how did you meet or come to know these**  
 20 **three individuals?**  
 21 A. Christopher, I grew up -- when I grew up as a  
 22 child, he was my next door neighbor and a  
 23 friend of mine, so I've known him ever since he  
 24 was born. Andrew, I met him -- actually, I met  
 25 him through Christopher, but he was also a

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1 probation agent and I would see him at work  
 2 every once in a while. And then Joel, I met  
 3 him the Northwestern Mutual building in  
 4 downtown Milwaukee. He was a security guard  
 5 there, and I would work there off duty as a  
 6 police officer but on my day off, and that's  
 7 how I met him.  
 8 **Q. Now, you said as a police officer, but on your**  
 9 **day off. So was that approved off-duty private**  
 10 **security work?**  
 11 A. I guess you could call it private security.  
 12 I'm not -- I don't know. But I was in full  
 13 Milwaukee police uniform in the building.  
 14 **Q. I see. So it was a situation where this**  
 15 **business pays the city to use a police officer**  
 16 **for a particular function?**  
 17 A. Yes.  
 18 **Q. So you're off duty in the sense that it's not**  
 19 **your normal schedule; correct?**  
 20 A. Right.  
 21 **Q. But you're on duty in a sense that you are in**  
 22 **uniform, you are there to function as a police**  
 23 **officer; correct?**  
 24 A. Right.  
 25 **Q. And, again, you said you met Joel at that time**

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1 because he was private security in the same  
 2 location?  
 3 A. Right.  
 4 **Q. Roughly, how long do you think you knew Joel as**  
 5 **of -- I keep forgetting our date there -- as of**  
 6 **the date of this incident? Let's just go with**  
 7 **that.**  
 8 A. I don't remember exactly, but I want to say I  
 9 met him about a year before, but I would only  
 10 see him every once in a while. I would only  
 11 see him a couple times a year because I  
 12 wouldn't work there that regularly, and  
 13 sometimes he wasn't at work while I was there.  
 14 So I met him about a -- I think about a year  
 15 before the incident happened, but I -- yeah,  
 16 that's about it.  
 17 **Q. So to the extent that there's any question**  
 18 **about whether Joel knew that you were a police**  
 19 **officer, do you believe there was any question**  
 20 **that Joel somehow didn't know that you were a**  
 21 **police officer?**  
 22 A. No. He knew because I -- like I met him while  
 23 I was in uniform, full uniform.  
 24 **Q. Okay. He never looked at you in that uniform**  
 25 **and said, come on, are you really a police**

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1 officer?  
 2 A. No, he didn't.  
 3 **Q. All right. So when he was sitting in your**  
 4 **house, did he ever say, were you really a**  
 5 **police officer while you were working downtown?**  
 6 A. No.  
 7 **Q. So there was literally no doubt that Joel knew**  
 8 **that you were a full-fledged police officer on**  
 9 **the night in question?**  
 10 A. Right.  
 11 **Q. Or the day in question. Okay. Now, had Joel**  
 12 **said I want to see your ID because I don't**  
 13 **believe you that you are a police officer now**  
 14 **that you've arrested me, assuming that you**  
 15 **arrested him, would you have shown him?**  
 16 A. I don't know. I mean, that's kind of a --  
 17 that's an odd question, but --  
 18 **Q. I know, but if he said I'm not cooperating**  
 19 **unless you show me your actual ID, would you**  
 20 **have shown it to him?**  
 21 A. I don't see why not.  
 22 **Q. Okay. And you could have because it was in**  
 23 **your house in the next room on your desk in**  
 24 **your office; correct?**  
 25 A. Well, if you are talking about the situation

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1 while we are all here.  
 2 **Q. No, I'm saying in general.**  
 3 A. In general?  
 4 **Q. If he had asked, you could have?**  
 5 A. In general?  
 6 **Q. Yes.**  
 7 A. Not in -- not in this situation?  
 8 **Q. Correct.**  
 9 A. So in general, yes, I could, but --  
 10 **Q. Okay. Now, when this incident occurred when**  
 11 **there's this struggle between Joel and**  
 12 **yourself, what were you wearing?**  
 13 A. Just jeans and a T-shirt, no shoes, socks.  
 14 **Q. And what was that T-shirt?**  
 15 A. I remember it was a memorial T-shirt for one of  
 16 the officers that was killed, an officer that I  
 17 knew, and that was the T-shirt.  
 18 **Q. And it also had an MPD badge insignia over your**  
 19 **left chest?**  
 20 A. Yes.  
 21 **Q. And a tactical enforcement design on the back?**  
 22 A. Yes.  
 23 **Q. And it was the Officer Matthew Rittner memorial**  
 24 **shirt?**  
 25 A. Right.

17 (Pages 65 to 68)



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- 1 **Q. So to the extent that Joel suddenly forgot that**  
 2 you were a police officer, looking at you he  
 3 would have seen you wearing something that  
 4 indicates you are a police officer, too;  
 5 correct?  
 6 A. That's possible, yes.  
 7 **Q. Now, did -- the other people there with you, do**  
 8 you know if they knew you were a police  
 9 officer?  
 10 A. Yes. Yes, everybody knew.  
 11 **Q. And how do you know that they knew?**  
 12 A. Well, Andy, I've seen him while I was at work  
 13 before, so he's seen me in uniform -- or I saw  
 14 -- I've seen him in the jail before, so he  
 15 knows that way. Christopher, he just -- he  
 16 knew because I told him and it's just kind of  
 17 common knowledge.  
 18 **Q. Okay. So the four of you in a room, there is**  
 19 absolutely no question that everybody in that  
 20 room knew that Mr. Mattioli is a police  
 21 officer?  
 22 A. That's right.  
 23 **Q. At this gathering, there are persons who are**  
 24 consuming alcohol. I think you said you were  
 25 one of them; correct?

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- 1 A. Yes, all of us were.  
 2 **Q. And how about illegal drugs? Do you know if --**  
 3 at the time, did you know whether there were  
 4 persons taking drugs that were not lawful?  
 5 A. No.  
 6 **Q. Now, something happens; am I correct? You go**  
 7 to sleep at some point in the night; correct?  
 8 A. Yes.  
 9 **Q. And before you went to sleep, though, was**  
 10 everyone getting along?  
 11 A. Yes. It was a normal -- normal night. Like I  
 12 said, it was kind of a boring night. We didn't  
 13 -- there was no conflicts of any sort  
 14 whatsoever. It was a friendly, boring night,  
 15 really.  
 16 **Q. What were you guys doing? Just sitting around**  
 17 and talking, watching TV, playing games? What  
 18 were you doing?  
 19 A. We were outside by the fire for the beginning  
 20 of the night. Eventually, we came inside and  
 21 sat around my kitchen table and just talked. I  
 22 don't know. I think maybe the guys were  
 23 playing cards. I wasn't playing cards myself,  
 24 just talking.  
 25 **Q. Okay. You guys eating food?**

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- 1 A. I don't think we ate anything.  
 2 **Q. Okay. Anybody come and go to visit, or just**  
 3 was it always just the four of you?  
 4 A. No. It was just the four of us.  
 5 **Q. At some point I think it's my understanding**  
 6 everybody goes to sleep, but in different  
 7 places within the home?  
 8 A. Right. Well, I don't know for a fact that  
 9 everybody slept. I know I went up to my  
 10 bedroom and I went to sleep, and I know Andy  
 11 went to sleep on the couch in the first floor  
 12 living room. But as far as Christopher and  
 13 Joel actually sleeping, I don't know if they  
 14 did.  
 15 **Q. Was it the intent that everybody would sleep**  
 16 there, or was it just, ah, we've had stuff to  
 17 drink, let's just crash for the night kind of  
 18 thing?  
 19 A. For -- it was kind of implied that everybody  
 20 would sleep over, yeah. That was my  
 21 understanding that people would sleep over. I  
 22 know Christopher and Andy had slept over in the  
 23 past, so it was implied for them. Joel had  
 24 never been in my house before, this was the  
 25 first time he had ever been in my house, so at

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- 1 some point during the night he asked me if it  
 2 was okay if he slept over, and I said  
 3 absolutely because we've all been drinking,  
 4 stay here, no problem.  
 5 **Q. And do you know where he went in the home --**  
 6 when you went upstairs, do you know where he  
 7 was?  
 8 A. No.  
 9 **Q. Okay. So you go to sleep, everything is calm**  
 10 when you go to sleep, what happens next?  
 11 A. The next thing after I went to sleep is I woke  
 12 up because I felt Joel going through my pockets  
 13 in my pants when I was sleeping.  
 14 **Q. And so what happens?**  
 15 A. I woke up because I felt somebody touching me.  
 16 So I woke up and I was laying on my back, I sat  
 17 up, and I was startled because it was somebody  
 18 just touching me in my sleep, it was strange,  
 19 and somebody was in my pocket. So I sat up and  
 20 I looked and I saw that it was Joel. He  
 21 quickly took his hand out of my pocket and took  
 22 a step back. The bedroom was dark, the lights  
 23 were off, it was still early in the morning,  
 24 the sun was just coming up, I think.  
 25 And I asked him, I said, "What are



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1 you doing?" Just like that, I said, "What are  
2 you doing?" And he didn't say anything to me,  
3 he was just silent and just stood there over  
4 me. So the next thing I said to him, I said,  
5 "Really, you are just going to steal from me  
6 like that?" And when I said that, he got  
7 angry, really angry and irate and started  
8 yelling at me. While I'm still laying in bed  
9 and he's still standing over me, he was yelling  
10 and moving fast.

11 And I could tell by his energy level  
12 and his movement that he hadn't slept. And  
13 that worried me because I thought he was  
14 sleeping, I thought everybody was sleeping. So  
15 he said -- when I asked him, "You are going to  
16 steal from me like that?" He started yelling  
17 at me and saying things like, "No, I didn't. I  
18 wasn't stealing from you. I wasn't stealing  
19 from you," but yelling it.

20 And while he was doing that, he was  
21 taking everything out of his pockets and, like,  
22 throwing it at me, saying, "Look, I didn't  
23 steal anything from you." Whatever he had in  
24 his pockets he was throwing at me on top of me  
25 on my bed. Yeah, that's what happened.

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1 **Q. And what did you have in your pockets at the**  
2 **time, if anything?**

3 A. I don't remember.

4 **Q. Did you have your wallet in your pocket, do you**  
5 **think?**

6 A. I think I had my wallet in my back pocket, yes.

7 **Q. If you had your wallet, do you know if you had**  
8 **any identification in there that would identify**  
9 **you as a police officer?**

10 A. I don't remember. I don't remember what was in  
11 my wallet that day.

12 **Q. Did you -- did you ever come to learn what Joel**  
13 **was looking for?**

14 A. No, I -- I don't know. I assume that he was  
15 looking for money, but I don't know if anything  
16 was stolen because I never got a chance. I was  
17 arrested immediately, taken out of my house,  
18 and then when I came back home, got out of  
19 jail, there was tons of things missing from my  
20 house, and I didn't know if it was from the  
21 police or just from Joel. I still don't know  
22 to this day.

23 **Q. Okay. All right. So he -- Joel has now thrown**  
24 **stuff at you, you've asked him, you know, are**  
25 **you going to steal from me, what happens next?**

75

1 A. That's when he's yelling at me and throwing all  
2 of the stuff from his pockets onto my bed. And  
3 I'm sitting there looking at him trying to  
4 figure out what's going on because it was  
5 really strange, really confusing to me because  
6 only a couple hours ago we were all friends  
7 having a good time, a normal time, and now he's  
8 super hostile and irate, and I'm trying to  
9 figure out why. And I couldn't figure it out,  
10 but all I knew is you need to get out of my  
11 house. And that's what I said to him, I said,  
12 "You need to leave right now."

13 **Q. So he's a completely different person than**  
14 **before you --**

15 A. 100 percent different person.

16 **Q. And that's unnerving to you?**

17 A. It was strange.

18 **Q. And in that moment, you realized maybe I don't**  
19 **know this guy as well as I thought?**

20 A. That's fair, yes.

21 **Q. And you decide you are going to have him leave**  
22 **your house?**

23 A. Right.

24 **Q. So what did you do to try to get him out of**  
25 **your house?**

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1 A. Well, first I told him while I was in bed, I  
2 said, "You need to leave my house right now."  
3 And I stood up and I got out of bed, and we  
4 both walked down the stairs together. I think  
5 he walked down first, I walked down behind him,  
6 and we got downstairs to my living room, and he  
7 was walking towards the kitchen, which is the  
8 door that we use to leave the house. I thought  
9 he was going to leave and everything was going  
10 to be okay, but he stopped and turned me around  
11 and, like, faced me in an aggressive manner,  
12 like squared up on me.

13 **Q. Now, at that point in time, did you tell him**  
14 **you really don't want to do this, you know I'm**  
15 **a police officer, or, like, what are you doing?**  
16 **Anything like that?**

17 A. I didn't say that. I just kept telling him to  
18 get out, just leave, get out of my house. And  
19 I was pointing towards the door, "Get out of my  
20 house." That's probably all I really said to  
21 him was, "Get out of my house."

22 **Q. Okay. And then at some point, others join you?**

23 A. So when we're downstairs, we walked down to the  
24 living room, that's when he turned around and,  
25 like, squared up -- kind of squared up on me.

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1 Andy was sleeping on the couch right there.  
 2 And Joel was, like, yelling and pacing back and  
 3 forth, like fast pacing, and he was pacing,  
 4 like, past Andy, who was sleeping on the couch.  
 5 And Joel shook Andy to wake him up, and Andy  
 6 stood up as confused as I was to what's going  
 7 on.  
 8 Andy just -- he got up, and he just  
 9 sat -- like stood there with a confused look on  
 10 his face, and I just kept telling Joel, "Get  
 11 out."  
 12 **Q. And Joel is not a small person either; correct?**  
 13 A. No, he's bigger than me.  
 14 **Q. All right. If you had to guess height-wise, do**  
 15 **you recall?**  
 16 A. I said he -- he was about my height. I'm 6'3",  
 17 so he was around my height.  
 18 **Q. And weight-wise, do you recall?**  
 19 A. I saw on the autopsy he was 270 pounds.  
 20 **Q. And was he muscular or more fat and obese?**  
 21 A. Well, they called him obese in the autopsy. I  
 22 didn't really see him that way. I know he was  
 23 a big guy. I didn't really look at him that  
 24 closely to call him obese, but I knew he was a  
 25 big guy.

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1 **Q. And you also knew then that he had worked in**  
 2 **private security, so presumably had at least**  
 3 **some training; correct?**  
 4 A. Possibly.  
 5 **Q. All right. Did you perceive him to be a**  
 6 **physical threat?**  
 7 A. Of course, yes.  
 8 **Q. Okay. And he's now squared off with you, he's**  
 9 **now woken up your friend, what happens next?**  
 10 A. He woke up Andy off the couch. Andy was  
 11 standing there. At some point Christopher  
 12 comes upstairs. I believe he was downstairs in  
 13 the basement, and he -- he came up. I think he  
 14 probably heard us yelling because I was yelling  
 15 at Joel to get out. Joel was yelling back at  
 16 me that he didn't do anything, and he was just  
 17 saying eff you and I'm not leaving. Things  
 18 like that.  
 19 So Christopher comes up. And at some  
 20 point I told Christopher -- because Christopher  
 21 came upstairs with a confused look on his face,  
 22 and I went like this towards Joel, and I said  
 23 to Christopher that he was stealing from me.  
 24 Yeah.  
 25 **Q. Then what happens?**

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1 A. That's when Joel began to get physical. He  
 2 lunged at me and struck me in my chest, neck  
 3 area. It was either a punch or a push. I  
 4 don't know. A little bit of both. I don't  
 5 know. But he lunged at me like that and hit me  
 6 here, and I took a step back. I didn't fight  
 7 him back, I didn't throw a punch -- or a punch  
 8 back. I was kind of in shock as to is this  
 9 actually happening right now, I can't believe  
 10 somebody would do this.  
 11 **Q. Were you injured?**  
 12 A. I don't think so, no.  
 13 **Q. All right. But when you said you took a step**  
 14 **back, was it because of the force that he**  
 15 **pushed you back or that you just took back to**  
 16 **create some distance?**  
 17 A. Because he pushed me back.  
 18 **Q. Okay. And then what happens?**  
 19 A. Shortly after that, he, Joel, punched  
 20 Christopher in the face.  
 21 **Q. What prompted that? Do you know?**  
 22 A. Nothing. As far as I could tell, it was  
 23 absolutely nothing. It was totally unprovoked.  
 24 **Q. Had something been said maybe or --**  
 25 A. Not that I know of, no. It was -- I -- the way

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1 I remember it, Christopher didn't say a word.  
 2 It was 100 percent unprovoked. Joel just  
 3 swung, punched him right in the face. And it  
 4 was a bad -- it was a good -- I don't know how  
 5 you want to say it. It was a bad punch.  
 6 **Q. So you knew it connected?**  
 7 A. Oh, yeah. I felt -- or I heard it crack and I  
 8 saw Christopher go back. And Joel threw the  
 9 punch so hard that he knocked himself off his  
 10 own feet when he threw the punch and he fell  
 11 over. And I had a tall lamp that was right  
 12 next to Joel, when he threw the punch, he  
 13 knocked the lamp over and the glass shattered.  
 14 It was ridiculous. It was all in a tight  
 15 little spot in my small house, too.  
 16 **Q. So this has now gone from somebody you want to**  
 17 **leave your house to now you witnessing, what, a**  
 18 **misdemeanor assault in your presence. Is that**  
 19 **fair?**  
 20 A. He assaulted me and Christopher, yes.  
 21 **Q. Okay. What happens next?**  
 22 A. After Joel fell onto the ground, I got on top  
 23 of him and I used my bodyweight to keep him on  
 24 the ground because I knew that as soon as he  
 25 got back up, he was going to continue throwing

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1 punches. It was my goal to not let that  
2 happen.

3 **Q. Now, at this point you've seen this assault,**  
4 it's not -- would you agree with me you didn't  
5 witness something that you would consider to be  
6 a felony level assault at this point?

7 A. I would say so, yes.

8 **Q. You would say so what?**

9 A. If you want to talk about crimes, what was  
10 going through my head at the time was that Joel  
11 had just tried to steal from me. I don't know  
12 if he did try to -- I don't know if he did  
13 steal anything or if he just attempted to steal  
14 anything. But he did that, and then he refused  
15 to leave my house, and then he started  
16 physically assaulting people. So in my head, I  
17 was thinking of the crime of robbery with use  
18 of force, which is a felony. Also, could be  
19 interpreted of theft from person, which is a  
20 felony, upstairs in my room.

21 He damaged property in my -- in my  
22 house. There's different crimes that you could  
23 say he committed and I think he committed.

24 **Q. Okay. So potential felonies that you've now**  
25 witnessed. With respect to the physical

83

1 moment?

2 A. Well, like I said before, he was a big guy  
3 throwing punches in a small tight spot in my  
4 house. I know from experience that punching  
5 somebody in the face can be deadly. That's  
6 possible.

7 **Q. So if you had your gun with you, would it have**  
8 been lawful for you to use deadly force as a  
9 police officer if you were performing as a  
10 police officer in full uniform at that moment?

11 A. That would be -- I don't know how to answer  
12 that. I -- that's not what happened. I did  
13 have my gun in the house, it was in another  
14 room, and never during this incident did I even  
15 think about going to get it. Didn't cross my  
16 mind.

17 **Q. If it was on you, did you feel threatened to**  
18 the point you would have shot him that moment?

19 A. If I had my gun on me, it would be a different  
20 story, it would have been different  
21 circumstances. I -- you know, different things  
22 could have happened. I could have pointed it  
23 at him and told him to get out of my house.

24 **Q. Not my question.**

25 A. Lots of things could happen.

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1 threat, though, he had not presented as a  
2 deadly threat to anyone yet; correct?

3 MS. BAYNARD: Objection to the form  
4 of the question.

5 Go ahead.

6 BY MR. JACOB:

7 **Q. Or at any time; correct?**

8 MS. BAYNARD: Same objection.

9 THE WITNESS: I don't know about  
10 that, but he -- I don't know how to answer that  
11 question. He was -- he was a threat. He was a  
12 big guy and he was throwing punches in a tight  
13 little spot in my dark house. It was a threat.

14 BY MR. JACOB:

15 **Q. Oh, I'm not disputing whether it was a threat**  
16 or not. I'm asking, did this threat rise to  
17 the he's trying to kill somebody?

18 MS. BAYNARD: I'm sorry, calls for  
19 speculation.

20 Your perception.

21 BY MR. JACOB:

22 **Q. Correct. I don't want to you speculate. I'm**  
23 asking for your perception. Did this threat  
24 rise to the level where you concluded Joel is  
25 trying to commit an unlawful homicide in this

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1 **Q. I appreciate that. My question, though, is**  
2 **he's now gone to the ground after throwing a**  
3 **punch after pushing you. If you had your gun**  
4 **on him, would you have shot him?**

5 A. At that point while he was on the ground, no.

6 **Q. Okay. And that's because you didn't perceive**  
7 **this as an immediate deadly threat to you;**  
8 **correct?**

9 A. Immediately deadly threat? I don't know what  
10 his exact intentions were.

11 **Q. I didn't ask that. I'm asking your perception.**

12 A. I really don't know how to answer your  
13 question.

14 **Q. Well, you know, down the road we are going to**  
15 **be in front of a jury and I'm going to ask you**  
16 **the same thing, so I am trying to find out now**  
17 **what your answer is going to be. When I say**  
18 **would you have shot him, you told me no. I'm**  
19 **just asking, well, why wouldn't you have shot**  
20 **him?**

21 A. In that very second while he was on the ground  
22 when he knocked himself over, that's what we  
23 were speaking about, and no, I wouldn't have  
24 shot him when he was down. I wouldn't have --

25 **Q. And that's because?**

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1 A. I would have done what I did. I would have  
2 used my bodyweight to just hold him down until  
3 the police could get there. And that's what I  
4 probably would have tried to do.  
5 **Q. Would you have tried to take his life in that**  
6 **moment? Was it that type of danger you felt**  
7 **you were facing?**  
8 A. I -- well, I never tried to take his life and  
9 I -- I didn't feel -- no. I didn't feel in  
10 that type of danger that I would need to take  
11 his life, no.  
12 **Q. As then being a police officer, I'm allowed to**  
13 **ask a little bit of legal as far as how it**  
14 **pertains to your job and how you've been**  
15 **trained. So my question to you then is as a**  
16 **police officer in that moment if you were on**  
17 **duty, would you have been allowed lawfully to**  
18 **shoot him when he was on the ground in that**  
19 **moment?**  
20 MS. BAYNARD: I'm going to object to  
21 the form of the question.  
22 Go ahead.  
23 THE WITNESS: Would I -- I mean,  
24 using deadly force is a very fluid situation.  
25 One person might say you are allowed, another

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1 person would say you are not allowed.  
2 BY MR. JACOB:  
3 **Q. I'm not asking that. I'm asking you would it**  
4 **have been your belief that using deadly force**  
5 **would have been lawful in that moment when he**  
6 **was on the ground?**  
7 A. No.  
8 **Q. Now, you, though, go to him; correct?**  
9 A. I -- when he fell over, I got on top of him,  
10 because like I said, I didn't want him to get  
11 up and keep punching people.  
12 **Q. Okay. And then what happens?**  
13 A. We wrestled around a little bit on the ground.  
14 He was trying to stand up and I was trying to  
15 keep him down on the ground. And he stopped  
16 struggling with me for a second, so I stood up  
17 over him and I got my phone out and I called  
18 911.  
19 **Q. All right. And what happens then?**  
20 A. I told the dispatcher I need help at my house.  
21 And shortly after that, Joel started to -- he  
22 tried to get back up again, and I tried to keep  
23 him back down on the ground.  
24 **Q. Am I correct, though, during the 911 call, you**  
25 **said I am a police officer and I need help?**

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1 A. I think -- yes. My words I think I said, "I'm  
2 an off-duty police officer and I need help at  
3 my house." That is what I said.  
4 **Q. And you admitted during cross-examination at**  
5 **your criminal trial you were attempting an**  
6 **arrest. You don't -- you didn't testify**  
7 **falsely at your criminal trial; correct?**  
8 A. No. I believe I said that to the police  
9 officers afterwards.  
10 **Q. Okay. So you're attempting at this point to**  
11 **arrest him because now he has done the various**  
12 **crimes that you had observed; correct?**  
13 A. Well, I mean, that's kind of a gray area. It  
14 -- I wanted him -- I wanted him arrested for  
15 sure --  
16 **Q. No, I understand.**  
17 A. -- because of the crimes that he did commit. I  
18 was off duty in my house. I didn't have --  
19 like I'm not the police officer who can  
20 handcuff him and book him into the -- you know,  
21 because I was off.  
22 **Q. I understand that. But my question is when you**  
23 **testified at your criminal trial under oath and**  
24 **you are cross-examined by the prosecutor and**  
25 **asked if you were performing an arrest and you**

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1 said you were, were you telling them the truth  
2 when you testified?  
3 A. Is that the words that I said? I'm not sure --  
4 **Q. You were asked --**  
5 A. -- that's correct.  
6 **Q. -- were you making an arrest and you said well,**  
7 **yeah.**  
8 A. I think I said, "In a way I was."  
9 **Q. Yeah.**  
10 A. I think those were my --  
11 **Q. Right.**  
12 A. -- exact words at the trial.  
13 **Q. Yeah. So you admitted it; correct?**  
14 A. I said -- I said "in a way" because I wanted --  
15 I detained him until the police got there.  
16 **Q. Right. So you had gotten up, everything was**  
17 **calm, and when he said and can be heard saying,**  
18 **"Let me go. I want to go home," you don't let**  
19 **him go home, though, at that point; correct?**  
20 MS. BAYNARD: Objection to the form  
21 of the question, and assumes facts not in  
22 evidence, so --  
23 BY MR. JACOB:  
24 **Q. Is that correct?**  
25 A. Say it again.



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1 **Q. Yeah. What --**  
 2 MS. BAYNARD: And -- sorry. And  
 3 compound. That was my form.  
 4 BY MR. JACOB:  
 5 **Q. Sorry. Yes. Then when he is saying "I want to**  
 6 **go home" and you can hear him in the call say**  
 7 **"I want to go home," you don't let him?**  
 8 A. Well, I heard him say that on the tape. I  
 9 didn't hear that in person in the heat of the  
 10 moment. I didn't hear that.  
 11 **Q. But you weren't letting him go. He was trying**  
 12 **to get -- squirm away at some point. You don't**  
 13 **let him go; correct?**  
 14 A. No, I did not.  
 15 **Q. All right. Whereas earlier when you were**  
 16 **saying, "Get out of my house," you would have**  
 17 **let him go?**  
 18 A. Right. I would have, but that was before he  
 19 became physical with us.  
 20 **Q. All right. And before it had turned from I'm**  
 21 **defending myself and others to I'm also**  
 22 **arresting you now; correct?**  
 23 A. I mean, I detained him until the police got  
 24 there. That's what I did.  
 25 **Q. Right. And you told the prosecutor you agreed**

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1 that it was in the performance of an arrest;  
 2 correct?  
 3 A. I said, "In a way." Yes, that's what I said.  
 4 **Q. Well, you didn't say no; correct?**  
 5 A. Right, I did not say no.  
 6 **Q. And after the incident when you were asked, you**  
 7 **explained you were arresting him for his**  
 8 **conduct; correct?**  
 9 A. I did say that, yes.  
 10 **Q. And you weren't obstructing justice and lying**  
 11 **to law enforcement when you were saying those**  
 12 **things after the incident; correct?**  
 13 A. No.  
 14 MS. BAYNARD: Objection to form.  
 15 THE WITNESS: Sorry.  
 16 MS. BAYNARD: Go ahead. He already  
 17 answered.  
 18 BY MR. JACOB:  
 19 **Q. You weren't obstructing justice, you were being**  
 20 **truthful at that time; correct?**  
 21 A. I was truthful through this entire process.  
 22 **Q. Okay. Now, as a police officer, am I correct**  
 23 **you are allowed to -- you have a privilege**  
 24 **under the law to use force that is objectively**  
 25 **reasonable to affect arrest; correct?**

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1 A. That sounds right.  
 2 **Q. And you did use some level of force with Joel**  
 3 **in affecting this arrest; correct?**  
 4 A. Yes.  
 5 **Q. The end result was Joel suffers**  
 6 **life-threatening injuries and eventually dies;**  
 7 **correct?**  
 8 A. You are asking me if the end result -- his  
 9 death was the end result of my force?  
 10 **Q. Yes.**  
 11 A. I don't know that.  
 12 **Q. Would you at least agree your force is part of**  
 13 **the events that resulted in a life-threatening**  
 14 **injury to him?**  
 15 MS. BAYNARD: Objection to the form  
 16 of the question.  
 17 You can answer.  
 18 THE WITNESS: I don't see it that  
 19 way, no.  
 20 BY MR. JACOB:  
 21 **Q. All right. Let me ask it this way. When he's**  
 22 **standing punching somebody, you don't see him**  
 23 **as -- as a medical emergency where he's dying**  
 24 **in that moment; correct?**  
 25 A. Correct.

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1 **Q. But when he's on the floor after you get off**  
 2 **and they are doing CPR, would you agree with me**  
 3 **that it appears that he's suffering from some**  
 4 **sort of medical emergency, which could be**  
 5 **deadly?**  
 6 A. I would agree with you when I saw it on the  
 7 body camera.  
 8 **Q. Okay. So in between those two events, him**  
 9 **punching and CPR performing, is anyone else**  
 10 **using any force on him other than, I think it**  
 11 **was, the friend who was holding his legs?**  
 12 A. No.  
 13 **Q. So the only force that's being used at that**  
 14 **time other than the legs is by you; correct?**  
 15 A. Correct.  
 16 **Q. Hang on one second here. Bear with me here.**  
 17 **I've got to navigate to something on here. The**  
 18 **force that you were using on Joel, the**  
 19 **technique for restraining him, where did you**  
 20 **learn that?**  
 21 A. I -- all I basically did was use my bodyweight  
 22 to keep him on the ground.  
 23 **Q. Okay. Where did you learn that?**  
 24 A. Basically from experience on the police force.  
 25 A lot of people try to run away from me and I



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1 was always able to just use my bodyweight to  
 2 keep the person on the ground until I could get  
 3 him in handcuffs.  
 4 **Q. It's not the first time that you used your**  
 5 **bodyweight on somebody who is on their stomach**  
 6 **to restrain them; correct?**  
 7 A. No.  
 8 **Q. No, it's not correct or no, it's not the first**  
 9 **time?**  
 10 A. No, it's not the first time.  
 11 **Q. All right. This was something that you have**  
 12 **done on duty in front of other police officers;**  
 13 **correct?**  
 14 A. Yes.  
 15 **Q. Nobody has told you during any of those scenes,**  
 16 **hey, don't do that, that's dangerous; correct?**  
 17 A. Correct.  
 18 **Q. Nobody has said, hey, that's excessive force,**  
 19 **you need to not do that; correct?**  
 20 A. Correct, nobody has said anything like that.  
 21 **Q. And at times, has this occurred even in front**  
 22 **of supervisors of the police department?**  
 23 A. Yes.  
 24 **Q. And those supervises never said, hey, don't do**  
 25 **that; correct?**

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1 A. Correct.  
 2 **Q. And had you been told by a supervisor, hey,**  
 3 **don't do that, that can hurt somebody, that's**  
 4 **excessive, would you have tried to conform your**  
 5 **future conduct to the instruction?**  
 6 A. Yes.  
 7 **Q. And in this situation, you are merely doing**  
 8 **what you had been doing when you are on duty as**  
 9 **far as restraining somebody; correct?**  
 10 A. To an extent, yes.  
 11 **Q. During the investigation, you had commented**  
 12 **that you had him under control, he was on his**  
 13 **stomach, but you couldn't see his face. Would**  
 14 **you agree with that?**  
 15 A. That sounds fair, yes.  
 16 **Q. And, also, when you were asked if you heard any**  
 17 **noises, you had said that you heard wheezing**  
 18 **noises coming from him toward the end. Do you**  
 19 **recall that?**  
 20 A. I don't recall that.  
 21 **Q. Hang on one second here. I got to find where I**  
 22 **put this. I apologize. Nothing is ever where**  
 23 **you think it's going to be.**  
 24 MS. BAYNARD: Do you want to take a  
 25 break?

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1 MR. JACOB: Yeah, let's take a  
 2 minute.  
 3 (Recess.)  
 4 BY MR. JACOB:  
 5 **Q. You recall speaking with David Dalland?**  
 6 A. I do.  
 7 **Q. Do you recall saying, "I didn't suffocate the**  
 8 **guy. I had my arms around his neck, yes, and I**  
 9 **held him there, but I didn't suffocate the guy.**  
 10 **I didn't press hard enough"? Do you recall**  
 11 **saying that?**  
 12 A. I do.  
 13 **Q. All right. And you weren't lying to him at**  
 14 **that time; correct?**  
 15 A. No.  
 16 **Q. You had no reason to lie; correct?**  
 17 A. Right.  
 18 **Q. You knew that this was an investigation and**  
 19 **that you are required to tell the truth; right?**  
 20 A. Right.  
 21 **Q. And so when your arms are around his neck, can**  
 22 **you tell us how they were around his neck?**  
 23 A. I was -- well, he was laying on his stomach and  
 24 I was on top of him with my knees on the  
 25 ground. And just like I said before, my arm

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1 was -- now, this was after a tussle, after  
 2 wrestling him for several minutes or however  
 3 long, I don't know, we were wrestling for. And  
 4 we ended in this position where I was on top of  
 5 his upper back and my right arm was on the  
 6 ground like across his neck and chin area, and  
 7 my other hand, my elbow was on the ground next  
 8 to his head on the left side.  
 9 **Q. In fact, when I saw on the video when the**  
 10 **officer comes in first, you are actually laying**  
 11 **down, though, on top of his back and upper head**  
 12 **area; correct?**  
 13 A. I -- I was kind of like straddling him, I guess  
 14 you could say.  
 15 **Q. I'm sorry. Yes, you are straddling, but your**  
 16 **upper body is laying down on his back, neck and**  
 17 **head area; is that correct?**  
 18 A. That's where I was positioned, yes.  
 19 **Q. Okay. And so you had the one arm under his**  
 20 **chin, neck area; correct? That was your right**  
 21 **arm, did you say?**  
 22 A. Yes.  
 23 **Q. And then your left -- am I correct at some**  
 24 **point, though, you are sort of holding his**  
 25 **head?**

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1 A. I don't think I ever held his head. I don't  
2 think so.

3 **Q. Okay. Well, even -- I mean, you are trying to**  
4 **prevent him from rising up; right?**

5 A. Right. Which he did several times during the  
6 struggle.

7 **Q. So he's pushing up, you are pushing down with**  
8 **your upper body against his back, head and neck**  
9 **area; correct?**

10 A. Correct.

11 **Q. And with the arm underneath his neck, that**  
12 **presumably -- was that what caused the**  
13 **wheezing, do you think?**

14 A. I don't think so, no.

15 **Q. What do you think was causing the wheezing?**

16 A. Well, I just want to say during the incident, I  
17 don't really -- well, I don't recall any  
18 wheezing. I know I might have said that, but I  
19 don't recall it now.

20 **Q. Okay.**

21 A. And I didn't know at the time about all of his  
22 health history with his lungs and asthma, and  
23 things like that. So that could have caused  
24 the wheezing, but I don't know. I didn't know  
25 that was a thing at the time. I didn't know

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1 that was an issue.

2 **Q. All right. But when you heard this respiratory**  
3 **distress, did you do anything to adjust?**

4 MS. BAYNARD: Sorry. Objection to  
5 the form to the question with the phrase  
6 "Respiratory distress," misstates --  
7 mischaracterizes his testimony.

8 Go ahead.

9 THE WITNESS: Well, yeah, I didn't  
10 notice any respiratory distress at any time.  
11 If I did, that would have changed the  
12 situation.

13 BY MR. JACOB:

14 **Q. But we know you did because you told the**  
15 **investigator that you heard him wheezing;**  
16 **right?**

17 A. I don't -- well, I don't agree with that.

18 **Q. You don't agree that you told the investigator**  
19 **that you heard wheezing?**

20 A. I don't remember saying that, but if you tell  
21 me I did, it is possible. But --

22 **Q. Okay. Now, in fairness, you said, "I wasn't**  
23 **squeezing tight enough where he couldn't**  
24 **breathe." Explain "squeezing" if you only have**  
25 **an arm under his neck.**

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1 A. Well, I didn't squeeze his neck at all ever.

2 **Q. Well, it says, though, that "I wasn't squeezing**  
3 **tight enough where he couldn't breathe." So**  
4 **were you -- did you mean, like, the pressure**  
5 **with the arm underneath, the pressure of your**  
6 **upper body underneath? Is that what you are**  
7 **referring to?**

8 A. No. Like I said, I never did squeeze his neck,  
9 so if I said that, that was poor choice of  
10 words.

11 **Q. Okay.**

12 A. But no, I never did squeeze his neck.

13 **Q. But you at least knew, though, that the arm was**  
14 **under the chin and the neck area and your body**  
15 **is on top of him, and at some point the**  
16 **struggle stops; correct?**

17 A. Yes.

18 **Q. And at that point, what did you do to**  
19 **deescalate to back off the level of force that**  
20 **you were using?**

21 A. Well, I tried to deescalate before this even  
22 happened. I tried.

23 **Q. I understand.**

24 A. I tried to deescalate by telling him to leave  
25 my house, but he didn't. He escalated the

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1 force.

2 **Q. I appreciate that. Can we stay on the question**  
3 **now, which was, at that point when he stops**  
4 **moving -- let me ask it differently. Am I**  
5 **correct when he stops moving, you still hold**  
6 **him in that position until the officer gets**  
7 **there?**

8 A. I stayed on top of him until the police got  
9 there, yes.

10 **Q. What, if anything, did you change, or did you**  
11 **maintain that same restraint-type technique**  
12 **until the officer got there?**

13 A. I just stayed on top of him with my knees and  
14 elbows on the ground so he couldn't get back  
15 up.

16 **Q. Okay. And arm still under his chin and the**  
17 **neck area?**

18 A. That's the position we ended up in, yes.

19 **Q. So he stops moving. The arm doesn't get**  
20 **withdrawn; correct? Because it was still there**  
21 **when the officer got there; correct?**

22 A. Well --

23 **Q. Right?**

24 A. That happened, yes.

25 **Q. So the officer gets there, and the arm is still**

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1 under his chin and the neck area, and he's not  
2 moving anymore; correct?  
3 A. Correct.  
4 **Q. And, again, as we saw in the video, your upper**  
5 **body is still laying on his upper back, neck**  
6 **and head area; correct?**  
7 A. I was on top of him, yes.  
8 **Q. Okay. Is there anything that's not factually**  
9 **correct about what I just said?**  
10 A. I don't think so.  
11 **Q. All right. And when asked by the officer,**  
12 **though, who arrives, "Is he breathing," you**  
13 **said you didn't know?**  
14 A. Right. Because when that officer first walked  
15 in, I said, "Handcuff this guy." That was my  
16 main concern because I figured he was still a  
17 threat.  
18 **Q. I see. So --**  
19 A. And --  
20 **Q. So breathing was not your main concern?**  
21 A. I didn't know there was anything wrong with his  
22 breathing at all, so my main concern was  
23 handcuff him. And then the officer asked me --  
24 he kind of ignored me, my request to handcuff  
25 him, and he asked me again -- or he asked me,

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1 "Is he breathing?" And I said, "I don't know.  
2 Handcuff him." I was blowing off his question  
3 saying "handcuff this guy" for a second time  
4 because I was concerned that he's still a  
5 threat.  
6 **Q. And yet he's essentially lifeless, he's not**  
7 **moving at that point; right?**  
8 MS. BAYNARD: Objection to the form  
9 of the question, calls for --  
10 If you know.  
11 BY MR. JACOB:  
12 **Q. Of course if you know.**  
13 MS. BAYNARD: Yeah.  
14 BY MR. JACOB:  
15 **Q. If you don't know, don't tell me something you**  
16 **don't know. And of course if he's laying there**  
17 **lifeless, tell me that, yes, that's what I**  
18 **observed, he was laying there lifeless.**  
19 A. I did not know he was lifeless or not breathing  
20 or anything like that. I didn't -- I thought  
21 he was fine.  
22 **Q. He was not moving at all at that point;**  
23 **correct?**  
24 A. I guess not.  
25 **Q. And you still -- when the officer tells you to**

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1 get up a couple times, you take his arms, you  
2 put them behind his back and want him  
3 handcuffed; correct?  
4 A. Yes.  
5 **Q. And, again, though, when asked, "Is he**  
6 **breathing," before you get up, you don't know;**  
7 **correct?**  
8 A. I said, "I don't know. Handcuff him," because  
9 I didn't think he wasn't breathing, I thought  
10 he was fine.  
11 **Q. Well, then why did you say, "He's fine.**  
12 **Handcuff him"?**  
13 A. Those just weren't the words that came out of  
14 my mouth. I don't know.  
15 **Q. Why didn't you say "handcuff him," and not even**  
16 **-- you said you were trying to blow off the**  
17 **question or blowing off the question. Why**  
18 **didn't you just say "handcuff him"?**  
19 A. Because I already did say that and he didn't  
20 listen to me, and I had to -- I had -- I don't  
21 know, say it in a way that would convey the  
22 correct message to him, I guess.  
23 **Q. So as you're there in that position when the**  
24 **officer walks in and he asks you if he's**  
25 **breathing and you say you don't know, you did**

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1 know?  
2 A. No, I did not know. I didn't know that he was  
3 hurt in any way, shape or form.  
4 **Q. Okay. So you didn't know if he was breathing,**  
5 **that's why you told the officer you didn't know**  
6 **if he was breathing; correct?**  
7 A. No. I --  
8 MS. BAYNARD: Objection --  
9 Oh, sorry.  
10 Objection to the form of the  
11 question --  
12 BY MR. JACOB:  
13 **Q. Is that correct?**  
14 MS. BAYNARD: -- asked and answered.  
15 Go ahead.  
16 THE WITNESS: I thought he was okay,  
17 so "okay" would be him breathing. I thought he  
18 was breathing.  
19 BY MR. JACOB:  
20 **Q. Okay. So you thought he was breathing and you**  
21 **told the officer you didn't know if he was**  
22 **breathing. That's what you are saying?**  
23 A. That's right.  
24 **Q. Okay. What were you doing while you were**  
25 **holding him once he started to calm down, slow**

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1 down and eventually stop moving? Were you  
 2 talking to him at all?  
 3 A. After he calmed down?  
 4 **Q. Yes.**  
 5 A. I don't think -- I don't remember talking to  
 6 him after that. I was exhausted from  
 7 struggling so much and I figured he was, too,  
 8 and I knew the police were going to be there  
 9 any minute, so I thought everything was okay.  
 10 **Q. Did you say anything while you were doing it,**  
 11 **look, just relax, calm down, the police are**  
 12 **coming? Anything that you recall?**  
 13 A. Before when we were struggling with each other,  
 14 I know I was -- we were talking to each other  
 15 then.  
 16 **Q. Do you remember what -- I know we could hear**  
 17 **him saying, "Let me go. I will go home." What**  
 18 **was your response to that?**  
 19 A. I said a bunch of words. I don't remember the  
 20 exact things that I said, but I know I was  
 21 cursing and I was angry, you know. But I don't  
 22 remember the exact words I said to him at that  
 23 point.  
 24 **Q. Okay. So he does calm, he does stop moving.**  
 25 **How long before the officer gets there does**

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1 that happen?  
 2 A. I don't know exactly. I really couldn't tell  
 3 you. It's been a long time.  
 4 **Q. It wasn't at the same moment, though; correct?**  
 5 I mean, it wasn't that the officer walked in  
 6 and then he stopped moving?  
 7 A. It wasn't instant.  
 8 **Q. So he had stopped moving, and then some time,**  
 9 **however much it is, passes, and then the**  
 10 **officer comes in; is that correct? That's the**  
 11 **order of things?**  
 12 A. Yes.  
 13 **Q. And so between the time he stops moving and the**  
 14 **officer comes in, what are you doing to assess**  
 15 **him medically to see is he breathing, is he**  
 16 **okay?**  
 17 A. Well, one time when he originally stops  
 18 struggling with me, I did look down and I saw  
 19 that he was breathing. I saw, like, the rise  
 20 and fall of his chest, and I thought to myself  
 21 it was a relief. I said, okay, thank God he's  
 22 done fighting me. Everything is okay. The  
 23 police will be here every minute, because I  
 24 called them, I gave them my address, so  
 25 everything is okay. I thought everything was

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1 okay.  
 2 **Q. And yet the officer comes in, your upper body**  
 3 **is back to laying down on him after apparently**  
 4 **getting up and seeing him breathing, and your**  
 5 **arm is still under his neck; is that correct?**  
 6 A. I never got up.  
 7 **Q. Okay. How did you see him breathing unless you**  
 8 **leaned up?**  
 9 A. I just looked down.  
 10 **Q. But you're laying -- your body was laying on**  
 11 **him by the time the officer got there. What**  
 12 **made you lay back down on him?**  
 13 A. I was on top of him, but I wasn't laying  
 14 100 percent of my bodyweight on him because my  
 15 arms -- or, I'm sorry, my elbows and my arms  
 16 and my knees were on the ground, so I was able  
 17 to just look down and see and feel that he was  
 18 breathing, and I didn't think it was a concern.  
 19 **Q. And you said, you know, thank God -- I think**  
 20 **you said you were telling yourself thank God**  
 21 **he's done fighting, the police are going to be**  
 22 **there. So why did you leave your arm under his**  
 23 **neck?**  
 24 A. I didn't think it was a problem because I  
 25 wasn't -- I was not choking him, I wasn't

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1 applying pressure to his neck, so I didn't  
 2 think it was a problem.  
 3 **Q. Okay. Am I correct, though, all you can say is**  
 4 **your arm was under his neck. You can't say**  
 5 **whether that was cutting off his airway or**  
 6 **cutting off his blood flow. Is that fair?**  
 7 A. I don't think it was. I don't believe it was.  
 8 **Q. No, I understand. But as you sit here, can you**  
 9 **say with certainty, no, I wasn't cutting off**  
 10 **his airway at any point when my arm was under**  
 11 **his chin?**  
 12 A. I think I can say that, yes.  
 13 **Q. Can you say with certainty I did not cut off**  
 14 **his blood flow at all or restrict his blood**  
 15 **flow at all while my arm was where it was**  
 16 **placed at any time?**  
 17 A. With my arm? Is that what your question was?  
 18 **Q. Based on how you are holding him, arm under the**  
 19 **chin, body laying down on him, can you say that**  
 20 **that technique did not restrict or stop his air**  
 21 **at any point in time?**  
 22 A. I can say that, yes.  
 23 **Q. You can say with certainty?**  
 24 A. Yes.  
 25 **Q. And same question with respect to blood flow.**



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1 Can you say that with certainty that it didn't  
 2 restrict the blood flow, cut off the blood flow  
 3 at any point in time?  
 4 A. I mean, that's -- that's -- I can't really  
 5 answer that question. That's more for a  
 6 doctor, not me.  
 7 **Q. Well, I'm asking you can you sit here and say**  
 8 **yes or no?**  
 9 A. I guess not.  
 10 **Q. Okay. But if you were standing across the**  
 11 **room, you would be able to say I didn't slow**  
 12 **his blood down because I'm standing across the**  
 13 **room; correct?**  
 14 A. That's fair.  
 15 **Q. All right. So there are scenarios where you**  
 16 **would be able to tell us with certainty that**  
 17 **you didn't. For instance, standing across the**  
 18 **room; right?**  
 19 A. Right. If I was standing across the room, yes.  
 20 **Q. But with this technique that you are using on**  
 21 **Joel, you can't say with certainty that you**  
 22 **didn't restrict his blood flow. Fair?**  
 23 A. I can't say that.  
 24 **Q. Okay. Do you know now, because you said you**  
 25 **Googled it, the rear naked chokehold? Do you**

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1 know how that's performed?  
 2 A. I think so. I've seen it on TV.  
 3 **Q. Am I correct, it's an arm underneath the chin,**  
 4 **neck area and the other arm putting pressure on**  
 5 **the head region?**  
 6 A. I don't know about that.  
 7 **Q. Okay. What's your understanding of how it's**  
 8 **performed?**  
 9 A. I don't -- well, I don't think it has any -- I  
 10 don't know. I didn't think it would have  
 11 anything to do with putting pressure on my  
 12 head. It's more of just the choke around the  
 13 neck.  
 14 **Q. Okay. That was your understanding?**  
 15 A. Yes.  
 16 **Q. Now, you said something to the effect you**  
 17 **weren't squeezing enough to choke. So you were**  
 18 **applying some pressure at some point; correct?**  
 19 A. No, I never did.  
 20 **Q. Never?**  
 21 A. No.  
 22 **Q. No pressure, your arm is just there?**  
 23 A. Right.  
 24 **Q. And you were not pushing down from above?**  
 25 A. I didn't have all my weight on him, no.

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1 **Q. So you had some weight, but you were or were**  
 2 **not applying pressure to his neck area?**  
 3 A. I had some weight on top of him, but I was not  
 4 applying pressure to his neck.  
 5 **Q. Do you know if because you had weight on top of**  
 6 **him based on positioning and with your arm**  
 7 **under his neck necessarily there would have**  
 8 **been some pressure to his neck?**  
 9 MS. BAYNARD: Objection, asked and  
 10 answered, and form of the question.  
 11 Go ahead.  
 12 THE WITNESS: I don't know that.  
 13 BY MR. JACOB:  
 14 **Q. Why did you say wasn't squeezing tight enough**  
 15 **where he couldn't breathe if you are saying now**  
 16 **that you didn't put any pressure at all?**  
 17 That's a strange thing to say, isn't it?  
 18 A. It was poor choice of words for me to say  
 19 anything at that point. I was very worked up  
 20 and I was mad and I was yelling at the  
 21 officers.  
 22 **Q. Okay. Why would you also say "I didn't press**  
 23 **hard enough" as opposed to I didn't put any**  
 24 **pressure on his neck?**  
 25 MS. BAYNARD: Objection to the form

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1 of the question.  
 2 Go ahead.  
 3 THE WITNESS: In hindsight, that's  
 4 what I should have said, but at that time, I  
 5 didn't -- like I said, I was worked up and I  
 6 was yelling, and it was just poor choice of  
 7 words on my part.  
 8 BY MR. JACOB:  
 9 **Q. So in hindsight, meaning, before you knew that**  
 10 **he had suffered a lethal injury, before you**  
 11 **knew that you were being criminally charged and**  
 12 **before you were being sued civilly, your**  
 13 **position was immediately after the incident**  
 14 **that I did not press hard enough; is that**  
 15 **correct?**  
 16 MS. BAYNARD: Objection to the form  
 17 of the question, argumentative, misstates his  
 18 prior testimony.  
 19 Go ahead.  
 20 BY MR. JACOB:  
 21 **Q. Correct?**  
 22 A. No, that's not what I'm saying.  
 23 **Q. Okay. I noticed in your criminal trial your**  
 24 **attorney asked you about whether you had locked**  
 25 **your hand with your arm. Do you recall that?**

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1 A. Yes.  
 2 **Q. And your answer was no; correct?**  
 3 A. Correct.  
 4 **Q. But I notice he didn't ask you if you had any**  
 5 **arms around or on his neck. Do you know why?**  
 6 A. I don't. I don't know why.  
 7 (Exhibit No. 16 was marked.)  
 8 BY MR. JACOB:  
 9 **Q. Showing you a document marked Exhibit Number**  
 10 **14.**  
 11 MR. MUCHE: Oh, that's 16.  
 12 BY MR. JACOB:  
 13 **Q. Oh, 16. Gosh.**  
 14 MS. BAYNARD: Did you mark that  
 15 yesterday?  
 16 BY MR. JACOB:  
 17 **Q. No.**  
 18 Do you know what that is?  
 19 A. It looks like the criminal complaint against  
 20 me.  
 21 **Q. Now, having been a police officer, you are**  
 22 **familiar with what a criminal complaint looks**  
 23 **like; correct?**  
 24 A. Yes.  
 25 **Q. And you are aware that there's an affidavit of**

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1 probable cause attached to that?  
 2 A. Is there?  
 3 **Q. I think it's -- well, we may call it something**  
 4 **different. You guys -- sorry, different state.**  
 5 **You guys included just this part of the body of**  
 6 **it. You would agree that it's sworn out by the**  
 7 **affiant; correct?**  
 8 A. That sounds right.  
 9 **Q. And that within the body of the complaint is**  
 10 **the -- what's supposed to be within the four**  
 11 **corners the facts that support probable cause**  
 12 **for the charge; correct?**  
 13 A. Right.  
 14 **Q. Presumably you've reviewed that document then.**  
 15 Is that fair to say?  
 16 A. I believe I read through when it first came out  
 17 in 2020.  
 18 **Q. All right. Let's take five minutes, and I'm**  
 19 **going to ask you to review it just because I**  
 20 **have some questions about it. And basically**  
 21 **the question is going to be is there anything**  
 22 **that's in there that is factually not correct?**  
 23 Okay?  
 24 A. Okay.  
 25 (Recess.)

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1 BY MR. JACOB:  
 2 **Q. You've had an opportunity to review Exhibit**  
 3 **Number 16, which you identified as the criminal**  
 4 **complaint that was filed against you; correct?**  
 5 A. Right. I just looked it over.  
 6 **Q. Now having read through it, can you -- is there**  
 7 **anything that is not factually correct stated**  
 8 **in that document?**  
 9 MS. BAYNARD: Hold on. I'm going --  
 10 I'm going to object to the form of the question  
 11 and foundation. This -- well, without making  
 12 speaking objections, the information that you  
 13 can confirm or -- trying not to make a speaking  
 14 objection. That my objection on foundation be  
 15 the information that he knows.  
 16 BY MR. JACOB:  
 17 **Q. Obviously you are only being asked about what**  
 18 **you know. So, again, is there anything in**  
 19 **there that you know to be not factually**  
 20 **correct?**  
 21 A. There's a lot of things in here. One thing  
 22 that stuck out to me was the fact that it says  
 23 I had him in a rear naked chokehold, which that  
 24 is not correct.  
 25 **Q. Okay.**

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1 A. There is a lot of things on here, I don't know,  
 2 but that was the one that stuck out to me.  
 3 **Q. Well, if there's other things, this is your**  
 4 **time.**  
 5 A. This is a long complaint.  
 6 **Q. Yeah. We might be doing this in front of the**  
 7 **jury, though. So, I mean, I want to know now**  
 8 **what you are going to identify.**  
 9 A. Well, after -- like I said, that was the one  
 10 thing that stuck out to me. I'd have to  
 11 probably have more time to look at it.  
 12 **Q. We can take a longer break if you'd like.**  
 13 MS. BAYNARD: Can he mark on it?  
 14 MR. JACOB: Huh?  
 15 MS. BAYNARD: Can he mark on it?  
 16 MR. JACOB: That's fine if you want  
 17 to use a highlighter.  
 18 MS. BAYNARD: Just to keep track of  
 19 stuff.  
 20 THE WITNESS: I suppose.  
 21 MS. BAYNARD: Or he can underline.  
 22 MR. JACOB: He can highlight it if  
 23 everyone is okay with that. That's fine with  
 24 me. Whatever.  
 25 MS. BAYNARD: Do you want to call it

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1 like 16 and 16A?

2 MR. JACOB: That's fine. He can use  
3 a highlighter.

4 MS. BAYNARD: It's totally up to you  
5 however you want to best go through it.

6 THE WITNESS: I don't know. What  
7 should be done here? What's the right way to  
8 do this?

9 BY MR. JACOB:

10 **Q. Just go take it paragraph by paragraph and look**  
11 **it over, and if something jumps out as that's**  
12 **not factually correct, tell us that's not**  
13 **factually correct.**

14 A. All right. The line that I said before on page  
15 number 2, number 6 -- not the first number 6,  
16 the second number 6, that's something I don't  
17 agree with.

18 **Q. Can you read what part you don't agree with?**

19 A. Number 6, "It appeared that Mattioli had the  
20 victim in a rear naked choke hold." That I  
21 don't agree with. And, also -- let's see here.  
22 Holding -- holding the victim's head, I wasn't  
23 holding his head. Yeah.

24 **Q. Okay. Where is that in there?**

25 A. That's also in line number 6, same line. Also,

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1 number 6 at the end, it said, "Mattioli had his  
2 body weight on the victim's upper body and it  
3 appeared Mattioli may have been compressing the  
4 victim's neck." I was not compressing his  
5 neck. And that statement is kind of -- it  
6 appeared he may have been, it's kind of a -- I  
7 don't like that statement.

8 **Q. Okay.**

9 A. Line number 8, "He asked Mattioli if the victim  
10 was breathing and Mattioli responded 'I don't  
11 know.'" Well, they cut off the second part of  
12 the sentence that I said, which was "handcuff  
13 him." I think they do that another time in  
14 this complaint somewhere, but I'm not sure.  
15 But I don't agree with that because they take  
16 half my words, not all my words. Sorry, I'm a  
17 slow reader.

18 **Q. That's fine. Take all the time you need.**

19 A. There's some things about the writing out of  
20 the 911 tape that I kind of don't agree with,  
21 because I'm sure you guys have listened to it  
22 and it's really garbled and it's not as clear  
23 as they say it is on here. And then -- I don't  
24 know. This is weird. But that line 6, and  
25 excuse my profanity, but it says I am stating,

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1 "Oh yeah. Oh yeah, fuck me fucking so bad."

2 Like I -- why would I ever say anything like  
3 that? That's strange. So I don't really agree  
4 with that.

5 **Q. With respect to the 911 tape that you just**  
6 **said, are you saying it's factually incorrect**  
7 **or just saying that you couldn't hear that when**  
8 **you were listening to it?**

9 MS. BAYNARD: Sorry, hold on. When  
10 you say -- are you talking about the recreation  
11 of it or playing it right now?

12 BY MR. JACOB:

13 **Q. He just said that he doesn't like the way it's**  
14 **written out because he thought it was garbled.**

15 So I'm asking if you're saying that  
16 it's written out incorrectly or not?

17 A. Well, I would have to listen to the tape and go  
18 line for line, but I -- I will tell you this.

19 When I first saw this complaint and I read this  
20 complaint, I thought, wow, that was clear as  
21 day. And then I listened to the tape, and I  
22 said there's no way that this is the same tape  
23 that they listened to because the tape was so  
24 bad. That's my opinion of it.

25 **Q. Okay. So what you are saying is you're not**

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1 sure if it's factually correct, we need to  
2 compare the two. Is that fair?

3 A. Fair.

4 **Q. But if the tape does say what it says it says,**  
5 **then you don't dispute that the -- you are not**  
6 **saying that the tape or the 911 call is not**  
7 **authentic; correct?**

8 A. I believe it's authentic, it's just hard to  
9 hear.

10 **Q. Okay.**

11 A. Yeah.

12 **Q. So it will speak for itself; correct?**

13 A. I suppose we can say that.

14 **Q. All right. But you just want to make sure that**  
15 **that is factually correct as stated in there.**  
16 **Is that fair?**

17 A. Say that again.

18 **Q. Yeah. You just -- as you sit here since we are**  
19 **not comparing it right now, you are not**  
20 **comfortable saying yes, it's factually correct.**  
21 **You are saying that if, in fact, it matches,**  
22 **then you don't dispute, but as you sit here you**  
23 **can't say because you are not reviewing it?**

24 A. That's right.

25 **Q. That works.**

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1 A. For example, the eff me so effing -- or so bad,  
2 that can't be correct because I would never say  
3 anything like that. That's a strange thing to  
4 say, so I think that's wrong.

5 **Q. Okay.**

6 A. This line number 20 of the 911 tape where it  
7 says, "Gasping and a sound similar to loud  
8 snorting can be heard." I don't really agree  
9 with that because I never heard a snorting  
10 noise the night -- or the day of or on that  
11 tape of all the times I listened to it. I  
12 don't really -- I didn't really hear that.

13 **Q. Okay.**

14 A. All right. I think I'm done.

15 **Q. Okay. Now, you've admitted that you are  
16 attempting an arrest. On whose behalf would  
17 you be attempting that arrest?**

18 A. I was -- I held Joel down until the police  
19 could come and get him on behalf of everybody,  
20 on behalf of me, on behalf of Christopher who  
21 got punched in it the face.

22 **Q. My question is more on are you arresting on  
23 behalf of the state, are you arresting on  
24 behalf of a local county, are you arresting on  
25 behalf of another entity? That's my question.**

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1 A. Well, I mean, it really wasn't like that, but  
2 it happened in the city of Milwaukee, my house  
3 was in the city and county of Milwaukee. I was  
4 just -- like I said before, I just detained him  
5 until the police could get there.

6 **Q. I understand that, but we're past that where we  
7 already talked about the criminal trial where  
8 you admitted where you were making an arrest as  
9 well, where you told the investigators you were  
10 making that arrest. We are past that. My  
11 question is when you are making that arrest,  
12 you are doing that on behalf of someone, the  
13 king, the state, the federal government. I'm  
14 just asking you on behalf of whom?**

15 MS. BAYNARD: Objection to the form  
16 of the question.

17 Go ahead.

18 THE WITNESS: I mean, I didn't see it  
19 that way. In the heat of that moment, which  
20 was chaotic, I didn't --- I wasn't thinking,  
21 okay, I am arresting this man on behalf of the  
22 county of Milwaukee.

23 BY MR. JACOB:

24 **Q. I didn't ask that question. Can you just -- I  
25 appreciate that, but can you answer my**

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1 question? I have a reason for it. So when you  
2 admitted that you are making an arrest, I'm  
3 just asking you on whose behalf that arrest is?

4 MS. BAYNARD: Just object to asked  
5 and answered. I do think he explained to  
6 you -- I do think he answered the question.

7 But I think you can answer it again.

8 MR. MUCHE: I agree wholeheartedly.

9 BY MR. JACOB:

10 **Q. Great.**

11 I don't get it, so help me  
12 understand. I'm glad that they heard it and  
13 understood it. Maybe you can explain your  
14 answer to me. Was it on behalf of the federal  
15 government, on behalf of the state government,  
16 on behalf of some other government?

17 MS. BAYNARD: Same objection.  
18 Go ahead.

19 THE WITNESS: I mean, I don't see it  
20 that way. Even when I was an on-duty police  
21 officer arresting somebody, I never -- that's  
22 not something you think about.

23 BY MR. JACOB:

24 **Q. So you don't know as a police officer on behalf  
25 of whom your authority comes from when you are**

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1 making an arrest?

2 A. No, I didn't say that.

3 **Q. Well, I'm asking you, when you are making an  
4 arrest, are you making it on behalf of the  
5 federal government, the state government, your  
6 counsel?**

7 A. Well, I suppose it would depend on the  
8 circumstances of the arrest. That's -- I don't  
9 know.

10 **Q. So you were making an arrest. Would it have  
11 been for a federal crime?**

12 A. I don't think so, but --

13 **Q. Would it have been for a state crime?**

14 A. Possibly, yes.

15 **Q. Would it have been for a local ordinance?**

16 A. Possibly, yes.

17 **Q. Okay. And when you are functioning as a police  
18 officer, performing your law enforcement duties  
19 as a police officer, are you doing it on behalf  
20 of, let's say, your neighbor said, hey, you are  
21 going to be a police officer today, or are you  
22 doing it on behalf of a police department that  
23 says, hey, we are going to swear you in as a  
24 police officer, we are going to ask you to  
25 perform as a police officer on our behalf?**



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- 1 A. The second part, on behalf of the police  
2 department whatever.
- 3 **Q. And which police department was that?**
- 4 A. Well, the only police department I've ever  
5 worked for was Milwaukee.
- 6 **Q. Okay. And were you acting pursuant to -- or**  
7 **when you are a police officer, are you acting**  
8 **pursuant to your neighbor's book of rules, or**  
9 **does your police department give you a set of**  
10 **policies that you are acting pursuant to?**
- 11 A. The police department.
- 12 **Q. Or I should say attempting to act pursuant to**  
13 **because I understand there was some question as**  
14 **to whether you knew what was in certain**  
15 **policies. Is that fair?**
- 16 A. That's fair.
- 17 **Q. All right. And with respect to training, you**  
18 **went to the police academy, but that police**  
19 **academy was put on the by the city; correct?**
- 20 A. Right.
- 21 **Q. So is it fair to say -- you also said that that**  
22 **was the only law enforcement training you had.**  
23 **When you were acting as a police officer, were**  
24 **you attempting to apply the training that you**  
25 **received from the city then?**

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- 1 A. Can you say that again, please?
- 2 **Q. When you were acting in the capacity as a**  
3 **police officer, were you attempting to conduct**  
4 **yourself in accordance with the training**  
5 **provided by the city?**
- 6 A. When I was a police officer?
- 7 **Q. Yeah.**
- 8 A. Like in general?
- 9 **Q. Is there another time? I'm not trying to be**  
10 **smart, but --**
- 11 A. Well, it kind of seems like you are talking  
12 about the night of this incident.
- 13 **Q. Well, was there a different -- on the night of**  
14 **the incident, was there some other training**  
15 **that you were trying to adhere to, or were you**  
16 **trying to always perform when you performed as**  
17 **a police officer in accordance with the**  
18 **training provided by the city?**
- 19 A. You are getting me tricked up with all of these  
20 questions here. I don't know how to correctly  
21 respond.
- 22 **Q. All right. Well, let's ask it this way. When**  
23 **you perform an arrest as a police officer,**  
24 **okay --**
- 25 A. Okay.

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- 1 **Q. -- are you always trying to conform your**  
2 **conduct in accordance with your training?**
- 3 A. I suppose that's fair.
- 4 **Q. You were eventually internally investigated**  
5 **related to this incident through IAD. Is that**  
6 **fair?**
- 7 A. I was.
- 8 **Q. And if I recall, the violations that were**  
9 **alleged was integrity. And basically a core**  
10 **value of integrity and, again, a -- basically**  
11 **saying you violated the law. Is that fair?**
- 12 A. I think so. I don't remember exactly what they  
13 alleged me to have done. I don't know.
- 14 **Q. Were you ever investigated specifically for**  
15 **using a neck restraint?**
- 16 A. By MPD?
- 17 **Q. Yes.**
- 18 A. I don't know exactly what they did investigate  
19 me for.
- 20 **Q. Okay.**
- 21 A. They investigated me for this incident, but I  
22 don't know, like, what specifically what, you  
23 know --
- 24 **Q. Did you ever receive -- or do you recall**  
25 **receiving a document saying IAD is**

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- 1 investigating you because you were intoxicated  
2 when you performed an arrest?
- 3 A. I don't remember that, no.
- 4 **Q. Did IAD ever provide you or did MPD ever**  
5 **provide you with a document that said you are**  
6 **being investigated by IAD because you used**  
7 **non-sanctioned techniques during an arrest?**
- 8 A. Not that I remember.
- 9 **Q. At some point, are you aware that a Dr. Brian**  
10 **Peterson, a chief medical examiner, had**  
11 **performed an autopsy on Joel?**
- 12 A. Yes.
- 13 **Q. And are you aware that the cause of death was**  
14 **determined to be "anoxic encephalopathy" --**  
15 **I will give you the spelling later.**  
16 **-- "due to traumatic asphyxia"?**
- 17 A. That sounds right. I believe that's what it  
18 said in the complaint here.
- 19 **Q. And do you agree that the manner of death was**  
20 **determined to be homicide?**
- 21 A. That's what it says in the complaint, yes.
- 22 **Q. And is it your contention that the medical**  
23 **examiner's cause of death is not correct?**
- 24 MS. BAYNARD: Hold on a second.
- 25 Objection, calls for a medical -- medical

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1 opinion far beyond what Mr. Mattioli can  
2 render.  
3 Go ahead.  
4 MR. JACOB: No, I'm not --  
5 MS. BAYNARD: That --  
6 MR. JACOB: Okay. That's your  
7 objection. Fine.  
8 MS. BAYNARD: Go ahead. Yeah.  
9 BY MR. JACOB:  
10 **Q. Yeah. Are you saying that that is not correct**  
11 **because of whatever reason, some information**  
12 **you have or something else?**  
13 A. From what I remember, I would have to sit down  
14 and look at all of the medical reports, but I  
15 don't know. That was -- plus the standards for  
16 them to call -- a medical examiner to call a  
17 death a homicide are pretty low, from my  
18 understanding. But I would need to sit down --  
19 **Q. And as you sit here at your deposition having**  
20 **gone through the criminal trial, everything**  
21 **else, as you sit here are you saying or are you**  
22 **saying you can't answer -- are you saying that**  
23 **this cause of death stated by this medical**  
24 **examiner is not correct?**  
25 A. This medical examiner, Dr. Peterson, he called

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1 it a homicide. That was -- that's what he  
2 called it.  
3 **Q. Okay. Again, please listen to the question**  
4 **because I'm not even talking about manner of**  
5 **death right now, I'm talking about cause of**  
6 **death when he said the anoxic asphyxia injury.**  
7 **What I'm asking is as you sit here today, are**  
8 **you saying or can you say that that cause of**  
9 **death is not correct? Either can say it or you**  
10 **can't say it?**  
11 MS. BAYNARD: Same objection.  
12 Go ahead.  
13 THE WITNESS: I can't say that.  
14 BY MR. JACOB:  
15 **Q. And same question with respect to manner of**  
16 **death being a homicide. As you sit here today,**  
17 **can you say that is absolutely not correct, or**  
18 **I can't answer, or that is correct?**  
19 A. I'd have to say the same. I can't really  
20 answer that.  
21 **Q. In the event that the manner of death is**  
22 **correct, it being a homicide, is there anyone**  
23 **other than you whom you believe could have**  
24 **caused that homicide?**  
25 A. That's another strange question. I don't know

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1 how to answer that. I mean --  
2 **Q. Well, let's look at it this way. Did anyone**  
3 **come running in and commit a homicide in front**  
4 **of you?**  
5 A. No.  
6 **Q. Okay. So there's two of you who are hands on**  
7 **with Joel; correct?**  
8 A. Right.  
9 **Q. Well, if the -- if it's proven that the manner**  
10 **of death is, in fact, correct a homicide, was**  
11 **it your friend who was holding the legs who**  
12 **caused that, or would you have caused that, or**  
13 **was there someone else that I'm not aware of**  
14 **who caused that?**  
15 MS. BAYNARD: Again, I think it calls  
16 for an opinion outside of what he can render.  
17 Go ahead.  
18 THE WITNESS: I don't know how to  
19 answer your question.  
20 BY MR. JACOB:  
21 **Q. Truthfully would work. I mean, seriously.**  
22 **There's only two of you who were touching him.**  
23 **Is there somebody else that I'm missing who**  
24 **could have caused this homicide if it's proven**  
25 **to be a homicide?**

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1 A. Joel himself. His actions had a huge part to  
2 do with this, yes.  
3 **Q. Okay. That's what I'm asking. So if it's**  
4 **proven to be a homicide, you are saying that**  
5 **Joel himself could have caused his own death.**  
6 **Is that what you are saying?**  
7 A. He had a large part to do with his own death,  
8 yes.  
9 **Q. Okay. Anyone else -- if it's proven to be a**  
10 **homicide, anyone else you could have --**  
11 A. Not that I can think of, no.  
12 **Q. How about you, do you believe that if it's**  
13 **proven to be homicide that you caused that**  
14 **homicide?**  
15 MS. BAYNARD: Object to the form of  
16 the question.  
17 Go ahead.  
18 THE WITNESS: Well, I think it was  
19 proven to not be homicide, wasn't it, at the  
20 criminal trial?  
21 BY MR. JACOB:  
22 **Q. I'm asking you. This was --**  
23 A. So I don't agree with that.  
24 **Q. Well, actually, it was proven not to be an**  
25 **unlawful homicide; correct? Meaning, nobody --**

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1 A. That was never really explained in the trial.  
 2 I never got any clarification to what the jury  
 3 decided on, if it was like a self-defense or a  
 4 defense of others, accident or something else.  
 5 There was no -- I never got any -- any  
 6 clarification on that.  
 7 **Q. You would agree, though, that a person killing**  
 8 **another person is a homicide? Regardless of**  
 9 **whether it's lawful or unlawful, that is**  
 10 **homicide?**  
 11 A. That's the definition there.  
 12 **Q. All right.**  
 13 A. That's the definition, I would think, yes.  
 14 **Q. So, again, putting aside lawful or unlawful,**  
 15 **I'm just asking, if it's proven that this is,**  
 16 **in fact, a homicide -- because you said you**  
 17 **didn't agree with it. If it's proven, though,**  
 18 **that's it's a homicide, I'm asking who would be**  
 19 **involved in that? Would it have just been Joel**  
 20 **in his own body, would it have been you, would**  
 21 **it have been you and Joel?**  
 22 A. Respectfully, it was proven not to be homicide  
 23 at trial.  
 24 **Q. Okay. How about the injury, that is, again,**  
 25 **the anoxic injury, if that is proven to be the**

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1 cause of death, did you cause that, did Joel  
 2 cause that, did somebody else cause that?  
 3 A. I don't --  
 4 MS. BAYNARD: Hold on.  
 5 THE WITNESS: Sorry.  
 6 MS. BAYNARD: Calls for a medical  
 7 conclusion.  
 8 Go ahead.  
 9 THE WITNESS: I don't even know what  
 10 that all means.  
 11 BY MR. JACOB:  
 12 **Q. Okay.**  
 13 A. It's a big word.  
 14 **Q. You were charged, you were ultimately**  
 15 **acquitted; correct?**  
 16 A. I was.  
 17 **Q. Did the city provide you with an attorney to**  
 18 **defend you during the criminal trial?**  
 19 A. No.  
 20 **Q. When it was determined that you hadn't violated**  
 21 **state law, did the city pay for your criminal**  
 22 **defense?**  
 23 A. No.  
 24 **Q. Do you know why?**  
 25 A. I don't know why exactly, no.

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1 **Q. Were you offered your job back by the city?**  
 2 A. No.  
 3 **Q. When you were sued in this matter after it had**  
 4 **been determined by a jury that you had not**  
 5 **committed the crime as alleged, did the city**  
 6 **say, hey, we will defend you under a**  
 7 **reservation of rights?**  
 8 A. No.  
 9 **Q. Do you know why not?**  
 10 A. I don't know exactly why, no.  
 11 **Q. Do you -- are you aware that the city's**  
 12 **position is you were not acting as a police**  
 13 **officer that night?**  
 14 A. I believe that's their position.  
 15 **Q. Are you aware that the city's position is you**  
 16 **were acting in self-defense as just a citizen?**  
 17 A. I think so.  
 18 **Q. When you were just a citizen before you became**  
 19 **a police officer, did you believe you had a**  
 20 **lawful right to go arrest people on behalf of**  
 21 **the state?**  
 22 A. Well, there is the statute of citizen's arrest.  
 23 **Q. Okay.**  
 24 A. Citizens do have the power to arrest a person  
 25 or defend themselves or defend others, so I

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1 suppose, yes.  
 2 **Q. Okay. And, in fact, officers can also engage**  
 3 **in self-defense while performing their duty;**  
 4 **correct?**  
 5 A. That's correct.  
 6 **Q. So the mere fact that you are at one point**  
 7 **believing that you were acting in self-defense,**  
 8 **that doesn't mean you weren't acting as a**  
 9 **police officer; correct?**  
 10 A. Me acting in self-defense doesn't necessarily  
 11 mean I was acting as a police officer. You  
 12 know, it was a very fast and fluid situation.  
 13 **Q. No. I'm saying even if you were at some point**  
 14 **during this incident -- I understand it's fluid**  
 15 **and it changes. But at some point if you were**  
 16 **trying to defend yourself, that doesn't mean**  
 17 **that you weren't a police officer suddenly;**  
 18 **correct?**  
 19 MS. BAYNARD: I'm just going to  
 20 object to the form of the question.  
 21 Go ahead.  
 22 THE WITNESS: I'm trying to  
 23 understand the question here.  
 24 BY MR. JACOB:  
 25 **Q. The city is saying you are acting in**

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1 self-defense, therefore, you are not acting as  
 2 a police officer.  
 3 A. Okay.  
 4 **Q. My question is aren't there times as a police**  
 5 **officer where you may need to act in**  
 6 **self-defense?**  
 7 A. Yes.  
 8 **Q. And that doesn't mean if you suddenly act in**  
 9 **self-defense that you are not a police officer;**  
 10 **correct?**  
 11 A. That's right.  
 12 **Q. And when you are a citizen while you may have**  
 13 **been able to perform a citizen's arrest, you**  
 14 **were not actually assigned that as a job to go**  
 15 **out and arrest people on behalf of the city;**  
 16 **correct?**  
 17 A. Before I was a police officer?  
 18 **Q. Yes.**  
 19 A. No.  
 20 **Q. Okay. Just going to take a -- oh, wait. I'm**  
 21 **sorry, there is one. Sorry. I'm showing you a**  
 22 **document marked Exhibit Number 11. What is**  
 23 **that?**  
 24 A. This is my letter of resignation from the  
 25 police department.

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1 **Q. Did you do anything wrong during this incident**  
 2 **as a police officer?**  
 3 A. I don't believe so, no.  
 4 **Q. Why did you resign?**  
 5 MS. BAYNARD: I'm just going to  
 6 object to the extent that it invokes anything  
 7 that would be protected by attorney-client  
 8 privilege.  
 9 BY MR. JACOB:  
 10 **Q. No offense, don't -- I'm not asking what your**  
 11 **attorney says, I'm asking you. Why did you**  
 12 **resign?**  
 13 MS. BAYNARD: Yeah, you personally.  
 14 THE WITNESS: Sure. The reason I  
 15 resigned is -- I didn't want to resign, but the  
 16 Fire and Police Commission was very quickly  
 17 doing their investigation, and they were even  
 18 going to have a trial and they were doing all  
 19 sorts of stuff I think within a month or two of  
 20 this incident happening, and they were going to  
 21 televise everything. So they were going to  
 22 televise -- because everything was televised,  
 23 everything was on the news.  
 24 So that means all the information  
 25 about my trial -- or about this incident would

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1 have been out in the news immediately. And my  
 2 two criminal attorneys advised me --  
 3 BY MR. JACOB:  
 4 **Q. I don't want to know that.**  
 5 MS. BAYNARD: Yeah.  
 6 BY MR. JACOB:  
 7 **Q. Okay. So that's why you resigned?**  
 8 A. To prevent them from basically violating my  
 9 constitutional rights of having a fair trial.  
 10 **Q. So is it fair to say you were put in a**  
 11 **Catch-22, that either you exercise your**  
 12 **constitutional rights or you protect your**  
 13 **employment, and you had to choose one or the**  
 14 **other?**  
 15 A. That's fair.  
 16 MR. JACOB: Let's take a moment.  
 17 (Recess.)  
 18 BY MR. JACOB:  
 19 **Q. Just to clarify, in your discovery responses**  
 20 **and I believe that you even said, you were**  
 21 **trying to comply with the off-duty policy;**  
 22 **correct?**  
 23 MS. BAYNARD: Hold on one second.  
 24 Object to the form of the question. Did you  
 25 say in his discovery responses?

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1 BY MR. JACOB:  
 2 **Q. Yeah. In request for admissions, there's**  
 3 **something the policy -- I remember he was**  
 4 **saying he was trying to comply with the policy.**  
 5 **You knew that there was an off-duty**  
 6 **policy with respect to police officers;**  
 7 **correct?**  
 8 A. I know that -- yeah. I knew that there was  
 9 such a policy.  
 10 **Q. And in your discovery responses, you indicated**  
 11 **that you had been trying to comply with that**  
 12 **policy. You don't dispute that; right?**  
 13 A. I don't really remember that.  
 14 **Q. Okay. You just don't remember as you sit here**  
 15 **today?**  
 16 A. I don't remember saying anything like that.  
 17 **Q. Okay. Okay.**  
 18 A. I don't remember every word.  
 19 MR. JACOB: Okay. We will rest on  
 20 your discovery responses. That's fine. Fair  
 21 enough. All right. I'm finished.  
 22 EXAMINATION  
 23 BY MR. MUCHE:  
 24 **Q. Okay. Good morning, Mr. Mattioli. I'm going**  
 25 **to probably hop around a little bit.**



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- 1 A. Okay.
- 2 **Q. Maybe just go in reverse order. There's just a**
- 3 couple points I want to pick up that came over
- 4 the course of this morning, but I'm not going
- 5 to belabor this any more than necessary.
- 6 A. Okay.
- 7 **Q. I think the last sort of thing that you were**
- 8 discussing with Attorney Jacob was your letter
- 9 of resignation. And that obviously took place
- 10 chronologically before the criminal trial;
- 11 right?
- 12 A. Right.
- 13 **Q. So at the point that you were acquitted by the**
- 14 criminal jury, you had already resigned from
- 15 that?
- 16 A. Right.
- 17 **Q. You didn't -- you didn't approach the police**
- 18 department in any way seeking reinstatement at
- 19 that point, did you?
- 20 A. No.
- 21 **Q. Okay. At the point that you invited**
- 22 Mr. Acevedo to your house on April 18th of
- 23 2020, fair to say you knew his first and last
- 24 name?
- 25 A. Yes.

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- 1 **Q. Had you ever -- I believe we talked previously,**
- 2 Mr. Acevedo had met you at your house before a
- 3 St. Patrick's Day pub crawl event at some point
- 4 prior to this; right?
- 5 A. Yes.
- 6 **Q. Had you ever been to Mr. Acevedo's house?**
- 7 A. No.
- 8 **Q. Were you aware where he lived?**
- 9 A. I just knew he lived in Milwaukee somewhere was
- 10 my understanding.
- 11 **Q. Okay. Fair enough. There was some discussion**
- 12 previously about -- about some attempts to
- 13 transcribe the 911 call; right?
- 14 A. Right.
- 15 **Q. Do you also remember during the course of your**
- 16 criminal trial when the district attorney
- 17 played the 911 recording and asked you
- 18 questions about it?
- 19 A. Yes.
- 20 **Q. And in the course of that testimony, I think**
- 21 there were specific questions identifying
- 22 certain statements that were captured in that
- 23 recording and you identified yourself as the
- 24 speaker. Do you remember that?
- 25 A. That sounds right.

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- 1 **Q. As you sit here today, is it your testimony**
- 2 that to the extent that you identified yourself
- 3 as the speaker at the criminal trial that that
- 4 was truthful and accurate?
- 5 A. As -- I identified myself on that tape, yes.
- 6 There was other people's voices on that tape,
- 7 but I -- I'm sure I identified myself during
- 8 the trial. I know I made the call and I was
- 9 the first -- I believe I was the first person
- 10 to talk on that tape, I think, so that sounds
- 11 right.
- 12 **Q. Okay. And just one more clarification to make**
- 13 sure that we're connecting with one another,
- 14 right. I agree with you that there are other
- 15 voices on the call. To the extent that you
- 16 testified at your trial this particular voice,
- 17 that was me -- that this was me that time, you
- 18 would agree with all of that now?
- 19 A. I don't remember my exact testimony to what
- 20 question was asked. I don't remember exactly,
- 21 but I know I did testify about that tape, and
- 22 they did play the tape in the trial. I just
- 23 don't remember exactly what I said or what was
- 24 asked of me.
- 25 **Q. Do you want to review the transcript of those**

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- 1 proceedings to refresh your recollection?
- 2 A. If it will help.
- 3 **Q. Okay. Well, it's fair to say your memory is**
- 4 exhausted at this point; right?
- 5 A. Well, I don't remember everything. It was five
- 6 years ago and I would love to put this behind
- 7 me.
- 8 **Q. I can appreciate that. Okay. So why don't we**
- 9 mark this as Exhibit 17. And then once it's
- 10 marked, Mr. Mattioli, I will just ask you to
- 11 look at pages 72 and 73.
- 12 (Exhibit No. 17 was marked.)
- 13 THE WITNESS: 72 and 73?
- 14 BY MR. JACOB:
- 15 **Q. Yeah. And there's actually some highlighted**
- 16 portions on that page. I wasn't necessarily
- 17 anticipating offering this as an exhibit, but
- 18 you can actually limit your focus to the
- 19 highlighted portions of 72 and 73, I think.
- 20 A. Okay.
- 21 **Q. And when you've had a chance to read that, just**
- 22 let me know.
- 23 A. Okay.
- 24 **Q. Having reviewed your prior testimony, is your**
- 25 memory as to the specific statements to the 911

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1 recording refreshed?

2 A. For this particular section of it, yes.

3 **Q. Okay. And so now that your recollection has**

4 been refreshed, I will just return to my

5 original question. To the extent that you

6 identified particular statements as statements

7 that you made that were captured in that

8 recording, was that testimony truthful to the

9 best of your recollection now?

10 A. Yes. I -- it was truthful, and I identified --

11 the district attorney asked me, was this -- did

12 you say this, and I said yes, did you say this,

13 and I said yes.

14 **Q. Okay. When Officer Roach and Officer Sheremeta**

15 arrived at your home on the morning of

16 April 19th, you were wearing jeans -- a pair of

17 jeans and a T-shirt; right?

18 A. Right.

19 **Q. And that T-shirt was a memorial T-shirt related**

20 to an officer that had been killed on duty?

21 A. Yes.

22 **Q. Okay. Was that item of clothing issued to you**

23 by the Milwaukee Police Department?

24 A. No.

25 **Q. Was that item of clothing part of your uniform**

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1 as a Milwaukee police officer?

2 A. No, it was -- no, it was just a shirt.

3 **Q. Fair to say that if you were scheduled to be at**

4 work, you would be -- you would be wearing

5 something else, a uniform and not that T-shirt?

6 A. Well, at the end of my career, I did work in

7 plain clothes and there were times I did wear a

8 T-shirt or T-shirt of that nature.

9 **Q. To the extent -- well, fair enough. You had**

10 testified earlier that it was somewhat implied

11 or understood that Andrew and Chris would sleep

12 over on the evening of the 18th; right?

13 A. That was my understanding that they would most

14 likely sleep over.

15 **Q. And that's because everybody was going to be**

16 consuming alcohol that night; right?

17 A. Right.

18 **Q. And because after consuming alcohol, your**

19 functions and faculties could be impaired and

20 it might not be safe to operate machinery like

21 a motor vehicle?

22 A. Right.

23 **Q. And for the same reason, you told Mr. Acevedo**

24 that he could stay over that evening; right?

25 A. Right.

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1 **Q. Fair to say that you were intoxicated when you**

2 went to bed?

3 MR. JACOB: Objection.

4 BY MR. MUCHE:

5 **Q. You can answer.**

6 MS. BAYNARD: You can answer.

7 THE WITNESS: Okay.

8 MS. BAYNARD: He's allowed to make

9 objections, too.

10 THE WITNESS: Okay. Yes. I was

11 intoxicated when I went to bed.

12 BY MR. MUCHE:

13 **Q. And would you also agree that you were**

14 intoxicated when you woke up in the morning?

15 MR. JACOB: Objection.

16 MS. BAYNARD: Go ahead.

17 THE WITNESS: Somewhat, yes.

18 BY MR. MUCHE:

19 **Q. Okay. Prior to your being sworn in as a**

20 Milwaukee Police Department officer, you first

21 joined the police department as a police aide;

22 is that right?

23 A. Right.

24 **Q. And when was that?**

25 A. I think it was in 2006.

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1 **Q. Is that the same year you graduated high**

2 school?

3 A. God, 2005 I think I graduated, and '06 I

4 started at the police department.

5 **Q. Okay. So did you have any other jobs after**

6 graduation before starting with the police

7 department as a police aide?

8 A. I did.

9 **Q. Okay. What were those?**

10 A. I did a few -- I did a few different things.

11 What did I do? I worked at Leon's Custard

12 Stand, I worked in American TV Distribution

13 Center, and I worked somewhere else. I can't

14 remember. At a car wash I worked at the time.

15 A bunch of weird jobs.

16 **Q. Would you agree that you were basically angling**

17 to get onto the police force from graduation?

18 MS. BAYNARD: Objection to the form

19 of the question.

20 Go ahead.

21 THE WITNESS: No. No. Because I

22 started going to college for pre-dentistry.

23 Maybe I should have stayed in that, but for

24 some reason I chose to be a police officer

25 instead.

149

1 BY MR. MUCHE:

2 **Q. Fair enough. In any event, when you became a**  
3 police aide, you signed an acknowledgement that  
4 you had received all of the policies and  
5 procedures of the police department; right?

6 A. I don't really remember that as a police aide.  
7 I remember as a police officer in the academy,  
8 but not as a police aide.

9 **Q. Okay. Give me just one second to find the**  
10 appropriate page here. And I think maybe you  
11 can help me out because maybe I'm  
12 misunderstanding. Exhibit Number 8 --

13 MR. JACOB: I got you.

14 MR. MUCHE: Thank you.

15 MR. JACOB: 8 is the oath, 7 is the  
16 acknowledgement.

17 BY MR. MUCHE:

18 **Q. Okay. Then I mean 7. Thank you. I appreciate**  
19 it.

20 So I think we took a look at -- or  
21 you took a look at this earlier in the course  
22 of Attorney Jacob's questions; right?

23 A. Right.

24 **Q. And do you see at the bottom of the this page**  
25 the date that this document was signed?

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1 A. Yes. I see it's in 2006, which would have been  
2 when I was a police aide. I didn't realize  
3 that date before when he was asking me. Before  
4 I assumed it was from the academy, but now I  
5 see it's 2006.

6 **Q. Okay. And then you also had an opportunity**  
7 earlier this morning to review Exhibit  
8 Number 6, which were topic acknowledgements  
9 that you -- you executed during the course of  
10 your service as a police officer; right?

11 A. Can I see that again?

12 MS. BAYNARD: Sorry, which one are  
13 you saying?

14 MR. MUCHE: 6.

15 MS. BAYNARD: 6. So it will be in  
16 front of you.

17 THE WITNESS: Okay. This long list  
18 of SOPs?

19 BY MR. MUCHE:

20 **Q. Yes. And I think your testimony earlier might**  
21 have been that you hadn't seen this document  
22 previously; right?

23 A. Right.

24 **Q. If I were to represent to you that this is a**  
25 print-off of the records maintained by the

151

1 police department about topic acknowledgements  
2 you made during your time as a police officer,  
3 would you have any reason to doubt that?

4 A. No.

5 **Q. And so can you just -- well, let me back up.**

6 As policies change during the course of your  
7 time as a police officer, you would receive  
8 correspondence from the department asking that  
9 you acknowledged those changes; is that right?

10 A. Right.

11 **Q. How exactly did that work? Like is it an**  
12 e-mail, or is it a link that takes you to a  
13 portal, or something different?

14 A. I don't really remember. It might have been in  
15 an e-mail, but I can't remember.

16 **Q. Okay.**

17 A. It's been a long time.

18 **Q. Was it your understanding at that time that the**  
19 expectation was that you would read the  
20 changes?

21 A. Well, that was never really explained to me. I  
22 know we were responsible for it, but nobody  
23 ever -- like I said, there was no time to sit  
24 down and read this. Especially with new  
25 changes coming out over and over, it was

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1 unreasonable to -- unrealistic to read all of  
2 that while you are working.

3 **Q. Appreciating all of that, would you agree or**  
4 disagree that your understanding was you were  
5 expected to do that, whether it was feasible?

6 A. Well, nobody ever did tell me that.

7 **Q. All right. That's fair. I think there was a**  
8 question earlier about whether you were -- you  
9 were trained in the course of your time as a  
10 Milwaukee police officer to only use trained  
11 tactics. And if memory serves, your answer was  
12 that maybe that wasn't said to you in so many  
13 words. Does that sound right?

14 MS. BAYNARD: Object to the form --

15 MR. JACOB: Objection.

16 MS. BAYNARD: -- form of the  
17 question. Can you say the question again?

18 BY MR. MUCHE:

19 **Q. I will withdraw the question and try it a**  
20 different way. During the course of the time  
21 that you were a police officer, were you aware  
22 of any action taken by supervising officers  
23 either to yourself or any of your colleagues  
24 relative to the use of untrained tactics?

25 A. Was there any training to that? Is that

153

1 what --

2 **Q. Were there any corrective measures, any policy**

3 **consultations, any disciplinary actions?**

4 MS. BAYNARD: Just -- I'm going to

5 object to the form of the question.

6 You can answer.

7 MR. JACOB: Objection.

8 THE WITNESS: I don't know how to --

9 I don't want to speak to that.

10 BY MR. MUCHE:

11 **Q. You can answer if you can.**

12 A. I really don't remember.

13 **Q. You do recall when you were speaking with**

14 **Inspector Dalland making a comment in response**

15 **to him about how it was not a trained**

16 **technique; right?**

17 A. Right.

18 MR. JACOB: Objection.

19 BY MR. MUCHE:

20 **Q. And is that because you were aware that use of**

21 **untrained techniques could result in a**

22 **supervisory response?**

23 MS. BAYNARD: Objection to the form

24 of the question.

25 Go ahead.

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1 THE WITNESS: I -- no. I said that

2 to him because it was not a trained technique.

3 BY MR. MUCHE:

4 **Q. But why was that significant to you, I guess,**

5 **is what I'm trying to understand?**

6 MS. BAYNARD: Objection to the form

7 of the question.

8 Go ahead.

9 THE WITNESS: Well, because they were

10 accusing me of strangling Joel, and I was

11 trying to tell him that I -- that was not what

12 happened here.

13 BY MR. MUCHE:

14 **Q. You went to bed sometime after midnight in the**

15 **second floor of your house; right?**

16 A. Right.

17 **Q. And then you were awoken in the morning by**

18 **Mr. Acevedo in your bedroom?**

19 A. Correct.

20 **Q. And you and Mr. Acevedo became involved in a**

21 **verbal argument at that point; is that right?**

22 A. That's fair.

23 **Q. And that argument sort of which began on the**

24 **second floor proceeded down to the first floor**

25 **of the house; right?**

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1 A. Yes.

2 **Q. And ultimately, Mr. Acevedo struck you on the**

3 **first floor; right?**

4 A. Yes.

5 **Q. And then actually punched your friend, Chris,**

6 **on the first floor; right?**

7 A. Right.

8 **Q. At that point, he fell onto the ground and you**

9 **jumped onto his back?**

10 A. Joel fell, yes.

11 **Q. At any point while you were on Mr. Acevedo's**

12 **back, did you say the words "you are under**

13 **arrest" to him?**

14 A. No.

15 **Q. You and Mr. Acevedo began wrestling in, I think**

16 **it was, sort of the living room area, and that**

17 **proceeded in the kitchen area of the house on**

18 **the first floor; right?**

19 A. Right. It was all kind of right in the

20 doorway.

21 **Q. Okay. And during the time that you were**

22 **wrestling or struggling with him, at any point**

23 **did you say the words "stop resisting"?**

24 A. No.

25 MR. MUCHE: I don't think I have

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1 anything else.

2 EXAMINATION

3 BY MS. BAYNARD:

4 **Q. I will be quick, well, as I can. I am going to**

5 **direct you to Exhibit 16. Now, you were asked**

6 **to identify this document and review it for its**

7 **factual accuracy; true?**

8 A. True.

9 **Q. You didn't draft this document; correct?**

10 A. No, I did not.

11 **Q. And other than -- or would you agree that**

12 **statements you've made are quoted partially in**

13 **this document?**

14 A. Yes, that's fair to say.

15 **Q. Other than statements that you've made that are**

16 **quoted in their accuracy, can you, I guess,**

17 **confirm or deny the accuracy of any of the**

18 **information in here, factual accuracy?**

19 MR. JACOB: Objection.

20 THE WITNESS: I suppose not.

21 BY MS. BAYNARD:

22 **Q. Now, I'm going to take you to the second page.**

23 **And I believe when you were asked to point out**

24 **things you disagreed with, you said the second**

25 **number 6 and the second number 8. Would you**



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1 agree with that?

2 MR. JACOB: Objection as to  
3 characterization of my question.

4 MS. BAYNARD: What was your --

5 MR. JACOB: It was what was factually  
6 correct or incorrect.

7 BY MS. BAYNARD:

8 **Q. Oh, factually, sorry, correct or incorrect.**

9 Would you agree that the -- before we  
10 get to 1 through 12 on that page -- so I'm just  
11 going to point to it so we can move along  
12 faster. It indicates Investigator Sarah Blomme  
13 interviewed Officer Roach. Do you agree that  
14 these bullet points come from statements  
15 Mr. Roach made to an Investigator Sarah Blomme?  
16 A. That sounds right.

17 **Q. Okay. I'm going to take you to the second or**  
18 **the third page and the first set of -- the**  
19 **first set of numbers. If you look at number 3,**  
20 **do you recall ever making a statement -- and I**  
21 **can't tell if I'm looking at this as the**  
22 **complete statement or not. There's a quote**  
23 **from Mattioli, "there's no funny business Joel**  
24 **might tell you something else... I have**  
25 **nothing to hide. I was just going to sleep. I**

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1 held him on the ground in my kitchen for quite  
2 a while before the police showed up. I told  
3 him to get out of my house." And there's other  
4 stuff quoted from you.

5 Do you recall telling -- or making  
6 the statement, "there's no funny business Joel  
7 might tell you something else"?

8 A. I do remember that.

9 **Q. Did you make the statement because -- I guess,**  
10 **why did you make the statement?**

11 A. Because I thought Joel was going to tell the  
12 police -- was going to lie to the police about  
13 what actually happened.

14 **Q. And this was after the police had showed up and**  
15 **you had been taken out of your house?**

16 A. Right.

17 **Q. Okay. And so you -- I guess you said this**  
18 **because you believed that Joel was going to be**  
19 **able to make a statement; true?**

20 A. Right.

21 **Q. I think there was a line of questioning about**  
22 **the medical examiner's report or to that**  
23 **extent. I'm on page 4. Do you recall -- and**  
24 **I'm going to direct you to bullet point --**  
25 **there's the first bullet point 5. During the**

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1 criminal trial or when reviewing this  
2 complaint, do you recall seeing notes from the  
3 fire department that says, "During the time he"  
4 -- the EMT -- "was with the patient he did not  
5 see any marks on the patient's neck or anything  
6 out of the ordinary on the patient's body."

7 Do you recall that testimony from the  
8 trial or learning that at any point after this  
9 incident?

10 A. I remember reading it on the complaint.

11 **Q. I'm not going to belabor the 911 call on the**  
12 **back, but you would agree that -- the statement**  
13 **"Let me go home... my scores not woke... I'm**  
14 **going home." First, did you ever hear Joel**  
15 **Acevedo say, "let me go home... my scores not**  
16 **woke... I'm going home" while you guys were --**  
17 **during the interaction with him?**

18 A. No. I don't remember him saying anything about  
19 "Let me go home." And "my scores not woke," I  
20 don't remember him saying that. And even if I  
21 heard that, I wouldn't even know what that  
22 would even mean --

23 **Q. Okay.**

24 A. -- at the time.

25 **Q. You were asked questions about statements you**

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1 made to investigators either directly after or  
2 on body cam relating to your positioning of  
3 Joel Acevedo, like around his neck, you didn't  
4 squeeze that hard. Do you remember that line  
5 of questioning? And I'm sorry, when I say "do  
6 you remember," I mean, do you remember today  
7 when the plaintiff attorney asked you about  
8 that.

9 A. Yes.

10 **Q. Okay. When you were asked those questions on**  
11 **the date of the incident, was that after you**  
12 **were told by the investigator that Joel Acevedo**  
13 **had marks on his neck?**

14 A. I believe it was. And they told me he wasn't  
15 doing well, but I didn't believe that.

16 **Q. Okay. And I guess who's the first person that**  
17 **tells you that Joel -- or does anyone ever tell**  
18 **you during this kind of questioning session --**  
19 **so there's several statements in here, but**  
20 **after you are arrested until they book you,**  
21 **that Joel Acevedo has marks on his neck?**

22 A. I thought -- if I remember right, I thought  
23 Dalland told me that when we were at the police  
24 station.

25 **Q. So when you make the statement something like**

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1 -- I guess it was quoted, "I didn't suffocate  
2 the guy. I had my arms around his neck yes,  
3 and I held him there but I didn't suffocate the  
4 guy. I didn't press hard enough," were those  
5 in response to being confronted -- I don't want  
6 to say "confronted" -- being informed by  
7 Dalland that Joel wasn't doing well and he had  
8 marks on his neck?  
9 A. I believe so, yes.  
10 **Q. Okay. Now, I believe you said that you've**  
11 **talked about way, way, way back that there were**  
12 **-- something about the technique you had used**  
13 **with Mr. Acevedo to keep him on the ground, and**  
14 **that you had used this technique to get people**  
15 **in handcuffs before; true?**  
16 A. I have.  
17 **Q. Has anyone ever died while you placed them in**  
18 **handcuffs?**  
19 A. Never.  
20 **Q. Did you have any idea -- well, strike that.**  
21 **Do you know now that Mr. Acevedo had**  
22 **some medical issues?**  
23 A. I do now.  
24 MR. JACOB: Objection.  
25 BY MS. BAYNARD:

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1 **Q. Okay. And you sat through the criminal trial,**  
2 **you listened to the medical evidence from the**  
3 **medical examiner and other experts presented by**  
4 **the defense; true?**  
5 A. I did, yes.  
6 **Q. Did you have any idea that Mr. Acevedo had**  
7 **asthma on the night of the incident?**  
8 A. No.  
9 **Q. Okay. At any point from the time that you are**  
10 **-- during, I'm going to call it, the**  
11 **altercation, does Mr. Acevedo appear to be in**  
12 **medical distress?**  
13 A. No. Not to my knowledge, no.  
14 **Q. And at some point, you said he, like, gave up**  
15 **or became calm; true?**  
16 A. Right.  
17 **Q. What did you perceive that as?**  
18 A. Excuse me. I perceived him as giving up the  
19 fight. And I was exhausted, so I figured he  
20 was, too. And basically, I thought he accepted  
21 the fact that the police were on their way and  
22 he wasn't going to get away, and that was it.  
23 **Q. And when you called -- or strike that.**  
24 **Now, I think you said you had a duty**  
25 **weapon at -- your duty weapon was at your house**

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1 in the office during this incident?  
2 A. That's right.  
3 **Q. Did you ever -- and you never thought to go get**  
4 **your duty weapon; true?**  
5 A. True. That never crossed my mind.  
6 **Q. And Mr. Acevedo punched your friend in the**  
7 **face; true?**  
8 A. True.  
9 **Q. Did you punch Mr. Acevedo?**  
10 A. No, never.  
11 **Q. Did you ever push Mr. Acevedo?**  
12 A. No.  
13 **Q. Did you kick him?**  
14 A. No.  
15 **Q. Did you strike him?**  
16 A. No.  
17 **Q. Did you choke him?**  
18 A. No.  
19 **Q. Did you -- I guess what --**  
20 **MR. JACOB: Sorry. Objection to that**  
21 **last question.**  
22 **MS. BAYNARD: My next question?**  
23 **MR. JACOB: No, the last one. Your**  
24 **next one I don't know what it is. Your last**  
25 **question.**

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1 BY MS. BAYNARD:  
2 **Q. And what was the purpose in holding**  
3 **Mr. Acevedo, keeping him on the ground until**  
4 **the police showed up?**  
5 A. Joel was -- he was throwing punches at people,  
6 and I wanted to keep him on the ground so he  
7 couldn't do that anymore until the police could  
8 show up to arrest him.  
9 **Q. And did you mean to cause any harm to**  
10 **Mr. Acevedo?**  
11 A. No, not at all.  
12 **Q. And was Mr. Acevedo the aggressor in this**  
13 **situation?**  
14 **MR. JACOB: Objection.**  
15 **THE WITNESS: He was 100 percent the**  
16 **aggressor the entire time.**  
17 BY MS. BAYNARD:  
18 **Q. Okay. We've heard the term thrown around "rear**  
19 **naked chokehold." Have you ever performed a**  
20 **rear naked chokehold in your entire life?**  
21 A. No.  
22 **Q. Did you put Mr. Acevedo in a rear naked**  
23 **chokehold?**  
24 A. No.  
25 **Q. And did you know Mr. Acevedo was using illegal**

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1 drugs on the night of or into the early morning  
 2 of April 19th of 2020?  
 3 A. No, I didn't know it that day.  
 4 **Q. And you were asked whether or not you would**  
 5 have had the ability to use deadly force. Do  
 6 you -- do you recall that question?  
 7 MR. JACOB: Objection.  
 8 BY MS. BAYNARD:  
 9 **Q. You can answer.**  
 10 A. Yes, I was asked that question.  
 11 MR. JACOB: No.  
 12 BY MS. BAYNARD:  
 13 **Q. Even if --**  
 14 You didn't ask him that?  
 15 MR. JACOB: No, I --  
 16 MS. BAYNARD: If he would have been  
 17 permitted to?  
 18 MR. JACOB: If it would have been  
 19 lawful as a police officer in that  
 20 circumstance.  
 21 BY MS. BAYNARD:  
 22 **Q. Okay. So even if you would have been permitted**  
 23 to use deadly force against Mr. Acevedo, and by  
 24 "Deadly force," I mean, your firearm against  
 25 Mr. Acevedo, would you have?

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1 A. I don't think so because it was never my  
 2 intention to hurt him and it definitely wasn't  
 3 my intention to kill him. I just wanted to  
 4 hold him there until the police could get  
 5 there.  
 6 **Q. You held him there because you wanted to**  
 7 prevent him from becoming assaulted again?  
 8 A. Correct.  
 9 **Q. And assaulting you?**  
 10 A. Correct.  
 11 **Q. And assaulting Mr. Peters?**  
 12 A. Yes.  
 13 **Q. The plaintiffs -- I'm going to represent to you**  
 14 that the plaintiffs -- you are aware that the  
 15 plaintiffs filed a complaint against you, a  
 16 civil complaint?  
 17 A. Right.  
 18 **Q. We are here for a civil action that's separate**  
 19 from the criminal action?  
 20 A. Correct.  
 21 **Q. Okay. If I represent to you that the**  
 22 plaintiffs allege that you applied a chokehold  
 23 neck restraint to Acevedo for approximately  
 24 11 minutes and 27 seconds, would you disagree  
 25 with that?

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1 A. Yes.  
 2 MS. BAYNARD: I don't have anything  
 3 else.  
 4 EXAMINATION  
 5 BY MR. JACOB:  
 6 **Q. Just two questions. Number one, when you are**  
 7 on duty in full uniform and you arrest someone,  
 8 do you always say "you are under arrest"?  
 9 A. No.  
 10 **Q. And can you tell us how to perform a rear naked**  
 11 chokehold?  
 12 A. Not really, no.  
 13 MR. JACOB: Okay. No further  
 14 questions.  
 15 MR. MUCHE: I have nothing else.  
 16 (Proceedings concluded at 1:33 p.m.)  
 17  
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1 STATE OF WISCONSIN )  
 ) SS:  
 2 COUNTY OF MILWAUKEE )  
 3  
 4  
 5 I, ALICIA PABICH, a Certified Shorthand  
 6 Reporter and Notary Public in and for the State of  
 7 Wisconsin, do hereby certify that the above  
 8 deposition of MICHAEL MATTIOLI was recorded by me on  
 9 April 25, 2025, and reduced to writing under my  
 10 personal direction.  
 11 I further certify that I am not a  
 12 relative or employee or attorney or counsel of any  
 13 of the parties, or a relative or employee of such  
 14 attorney or counsel, or financially interested  
 15 directly or indirectly in this action.  
 16 In witness whereof I have hereunder set  
 17 my hand and affixed my seal of office at Milwaukee,  
 18 Wisconsin, this 1st day of May, 2025.  
 19  
 20  
 21  
 22 Notary Public  
 In and for the State of Wisconsin  
 23  
 24  
 25

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